

United States Bankruptcy Court for the Eastern District of Virginia

Local Bankruptcy Rules



Effective January 1, 1999
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RULE 1001-1 SCOPE OF RULES

The Supreme Court of the United States has, pursuant to 28 U.S.C. §2075, prescribed rules of procedure in bankruptcy cases. Federal Rule of Bankruptcy Procedure 9029 provides that courts may adopt local rules that are not inconsistent with the Federal Rules of Bankruptcy Procedure.

These Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia are hereby prescribed and promulgated as Local Rules governing practice and procedure before the Court. They are to be cited as the "Local Bankruptcy Rules" except that individual rules may be cited in the following form: "Local Bankruptcy Rule ____", or "LBR_____".

Comments

The prior set of Local Bankruptcy Rules contained several references that were inconsistent with this rule. Therefore, all incorrect references have been edited so that they are now in compliance.

RULE 1002-1 PETITIONS - COPIES

(A) ***Chapter 7, 12 and 13 Petitions***: An original and three copies of all chapter 7, 12 and 13 petitions shall be filed with the Court or by electronic means established by the Court.

(B) ***Chapter 9 and 11 Petitions***: An original and five copies of all chapter 9 and 11 petitions shall be filed with the Court or by electronic means established by the Court.

Comments

Changes have been made to allow for the filing of documents by electronic means provided under FRBP 5005(a)(2). For more detail on how this has been implemented on a pilot basis in the Alexandria Division see the "Order Adopting Electronic Case Filing Procedures" attached as Exhibit 3 and the "Administrative Procedures for Electronically Filed Cases" attached as Exhibit 4. It is planned that the ability to file electronically will expand to the other divisions during 1999.

RULE 1002-2 NOTICE TO INDIVIDUAL DEBTORS OF CHAPTERS AVAILABLE UNDER BANKRUPTCY CODE

(A) ***Requirement***: Section 342(b) of Title 11 of the United States Code states that "Prior to the commencement of a case under this title by an individual whose debts are primarily consumer debts, the Clerk shall give written notice to such individual that indicates each chapter of this title under which such individual may proceed."

(B) ***Distribution to Counsel:*** To comply with this requirement, the Clerk is directed to provide such notice on approved forms and to distribute such notice to all members of the Bar who regularly file bankruptcy cases.

(C) ***Copy to be Filed with Petition:*** Any individual debtor who files a petition in this Court must file with such petition the form referred to above, properly signed by the debtor(s).

(D) ***RESERVED***

(E) ***Inapplicability to Chapter 12 Cases:*** This Local Bankruptcy Rule does not apply to cases filed under chapter 12 of the Bankruptcy Code.

RULE 1006-1 FEES: INSTALLMENT PAYMENTS

(A) ***Application:*** Any individual debtor desiring to pay the filing fee in installments must file an application with the Clerk substantially conforming to that local form entitled "Application to Pay Filing Fee in Installments-Eastern District of Virginia". The application form is available from the Clerk's office. To be in substantial conformity, the application must:

- (1) include a statement that the debtor has not paid any money or transferred any property to the debtor's attorney or any other person for services in connection with the bankruptcy, nor will any such payment be made until the filing fee is paid in full,
- (2) include a statement that the debtor understands that the case will be dismissed if any installment payment is not received by the date due,
- (3) include a schedule of payments as prescribed in (B) below, and
- (4) be signed by both the debtor and the debtor's attorney (if any).

(B) ***Schedule of Payments:*** Any Application to Pay Filing Fee in Installments shall propose a payment plan in accordance with the following schedule:

	At Filing	1 Month After Filing	2 Months After Filing
Chapter 7	\$75	50	50
Chapter 11	\$430	400	--
Chapter 12	\$105	75	50
Chapter 13	\$70	45	45

Payments are due as shown, on the same day of the month as the date on which the petition was filed. If that date falls on a day that the Court is closed, payment is due not later than on the next business day. The initial payment for all cases includes the \$30 administrative fee which is due at the time of filing of the petition.

(C) **Entry of Order Approving Installment Fees:** If an Application to Pay Filing Fee in Installments conforms to the requirement of this Local Bankruptcy Rule, the Clerk shall enter an order approving the same.

(D) **Failure to Pay Installment:**

(1) **Rejection of Petition:** If a petition is filed without full payment of the filing fee or without an Application to Pay Filing Fee in Installments, or if an Application to Pay Filing Fee in Installments does not conform with the requirements of FRBP 1006 and this Local Bankruptcy Rule, the Clerk shall reject the petition.

(2) **Dismissal of Case:** The Clerk shall issue an order of dismissal in any case where the initial installment payment required under FRBP 1006 and paragraph (B) of this Local Bankruptcy Rule has not been received by the next business day after the petition was filed. In any case where a subsequent installment payment has not been received by the due date, the Clerk shall issue an order of dismissal.

(E) **Notice of Possible Dismissal:** The Clerk is to give notice of the dismissal provisions of this Local Bankruptcy Rule to a debtor or debtor's counsel at the time an Application to Pay Filing Fee in Installments is filed.

Comments

1006-1(B) This revision is due to changes made by the Judicial Conference at its September 1997 session to the Bankruptcy Court Miscellaneous Fee Schedule. The changes were effective January 1, 1998.

RULE 1007-1 LISTS, SCHEDULES AND STATEMENTS

(A) **Dismissal of Case:** In any case where lists, schedules and statements are not filed at the time of the filing of a voluntary petition, the Clerk shall enter an order of dismissal unless the same are filed within fifteen days after the filing of the petition, or a motion to extend time for filing lists, schedules and statements has been filed prior to the expiration of the fifteen day period.

(B) **Motion to Extend Time:** Such motion to extend time for filing shall be accompanied by a proof of service evidencing notice to the United States Trustee, any appointed trustee, any official committee appointed in the case and all creditors. Where there are more than thirty creditors in the case, the debtor need only provide notice of the motion to extend time to the ten largest secured creditors, the twenty largest unsecured creditors and any official committee appointed in the case. The motion to extend time shall give notice that parties objecting to the extension of time shall file written objections with the Court within five business days after service of the motion by the debtor.

(C) **Order Extending Time:** Where no objections to the motion to extend time are timely filed with the Court, the Clerk shall enter an order extending time for filing to not later than the fourth

business day prior to the scheduled meeting of creditors. If the lists, schedules and statements are not filed by said date, the Clerk shall enter an order dismissing the case.

(D) ***Objections -- Determination:*** Where objections are filed to the motion for extension of time, the Clerk shall submit the motion and objections to the Court for determination of the motion.

(E) ***Hearing on Further Extension:*** Any debtor requesting an extension of time to file lists, schedules and statements after four business days prior to the scheduled meeting of creditors must request a hearing date and give notice to parties as set forth in paragraph (B) of this Local Bankruptcy Rule and file a proof of service with the motion to extend time.

(F) ***Notice of Possible Dismissal:*** The Clerk shall give notice of this Local Bankruptcy Rule to a debtor or debtor's counsel who files a petition not accompanied by all required lists, schedules and statements. The Clerk shall also give notice of this Local Bankruptcy Rule in the meeting of creditors notice.

(G) ***Number of Copies:*** The number of copies of the lists, schedules and statements to be filed shall correspond to the number of copies of the petition required by Local Bankruptcy Rule 1002-1.

(H) ***List of Creditors Holding 20 Largest Unsecured Claims:*** To assist the United States Trustee in appointing a creditors' committee, the list required by FRBP 1007(d) shall include the amount owed, by amount of debt ranging from the largest creditor in amount owed to the smallest creditor in amount owed. The list shall also include the name and telephone number of a contact person or representative of the unsecured creditor.

(I) ***List of Creditors:***

(1) ***Filing:*** The debtor shall file with the petition a list containing the name and address of each creditor which shall serve as a mailing matrix. The mailing matrix shall be submitted on a computer diskette in the format specified by the Clerk's Office. The mailing matrix shall suffice for the list of creditors referred to in FRBP 1007(a).

(2) ***Dismissal of Case:*** In any case where the list of creditors is not filed at the time of the filing of the voluntary petition, the Clerk shall enter an order of dismissal unless the same is filed in the required format within forty-eight (48) hours after the filing of the petition.

(3) ***Waiver:*** An exception to the requirement of submission of creditors on computer diskette will be considered by the court only upon submission of a waiver request filed with the petition. The form shall be provided by the Clerk's Office upon request. In addition to the waiver request, the debtor shall file the list of creditors in the scannable format specified by the Clerk's Office. If the court obtains information which indicates the criteria set forth in the waiver request does not exist, the debtor or attorney for the debtor shall be required to submit the matrix on a computer diskette within forty-eight (48) hours of the filing of the petition.

Comments

1007-1(I) This new rule is to implement the procedure approved by the Judges at their November 1997 meeting requiring the submission of the List of Creditors by diskette beginning January 1, 1999. This speeds up the case opening process and reduces overall creditor related errors. For more information on the required procedure, refer to the attached Exhibits 5, 6, and 7.

RULE 1007-3 STATEMENT OF INTENTION

(A) **Requirement:** Pursuant to 11 U.S.C. §521(2)(A), each individual chapter 7 debtor with consumer debts secured by property of the estate shall file a Chapter 7 Individual Debtor's Statement of Intention ["Statement of Intention" hereafter]. The original statement shall be accompanied by such copies or proof of service as required by paragraph (B) of this Local Bankruptcy Rule. The statement shall be filed within thirty days after the petition is filed or on or before the meeting of creditors, whichever is earlier.

(B) **Service**

(1) **Upon Trustee**

(a) **Prior to Receipt of Meeting of Creditors Notice:** The debtor shall file with the original Statement of Intention a photocopy to be routed by the Clerk to the United States Trustee. No proof of service on the trustee is required. Such service shall satisfy the requirement of service on the trustee as specified in FRBP 1007(b)(2).

(b) **After Receipt of Meeting of Creditors Notice:** The debtor shall serve a copy of the Statement of Intention on the trustee appointed in the case. The original Statement of Intention filed with the Court shall be accompanied by proof of service evidencing proper service on the trustee.

(2) **Upon Affected Creditors:** Prior to filing the Statement of Intention with the Court, the debtor shall serve a copy of the same upon each creditor listed thereon.

(C) **Dismissal of Case:** The Clerk shall monitor the filing of a Statement of Intention and enter an order of dismissal in any applicable chapter 7 case where neither the Statement of Intention nor a motion to extend the time for filing the same has been filed within thirty days after the date of the filing of the petition, or on or before the date of the meeting of creditors, whichever is earlier.

(D) **Motion to Extend Time:** A motion to extend time for filing a Statement of Intention shall be accompanied by proof of service evidencing service on the United States Trustee, any appointed trustee, and all affected secured creditors. The motion to extend time shall state that any party

objecting to the extension of time must file a written objection with the Clerk within five business days after service of the motion.

(E) ***Order Extending Time***: Where no objections to the aforesaid motion are timely filed, the Clerk shall enter an order extending time for filing to ten days after the scheduled meeting of creditors. If the Statement of Intention is not filed by the tenth day after the scheduled meeting of creditors, the Clerk shall enter an order dismissing the case.

(F) ***Objections -- Determination***: Where objections are filed to the motion for extension of time, the Clerk shall submit the motion and objections to the Court for determination.

(G) ***Hearing on Further Extension***: Any debtor requesting an extension of time to file the Statement of Intention more than ten days after the scheduled meeting of creditors must request a hearing date and give notice to parties as set out in paragraph (B) of this Local Bankruptcy Rule and file proof of service with the motion to extend time.

(H) ***Notice of Possible Dismissal***: The Clerk shall give notice of this Local Bankruptcy Rule to a debtor or debtor's counsel who files a petition unaccompanied by the Statement of Intention.

RULE 1009-1 AMENDMENTS TO LISTS & SCHEDULES

(A) ***Notice to Affected Parties***: Where the debtor files any amendment to the petition, lists, schedules or statements previously filed, the debtor shall send notice of the same to the United States Trustee, any trustee appointed, and to any and all entities affected by the amendment. Where the debtor adds creditors to the case by supplementing either the schedules or the list of creditors previously filed, the debtor shall serve upon each newly-listed creditor a copy of the following:

- (1) the amendment,
- (2) the meeting of creditors notice,
- (3) the order granting discharge (if any),
- (4) any other filed document affecting the rights of said creditor, and
- (5) the notice required by Local Bankruptcy Rule 3003-1 (B)

(B) ***Filing of Amendment with Clerk's Office***:

- (1) Each amendment shall be filed in original only and accompanied by:

(a) ***Amendment Cover Sheet***: a properly completed Amendment Cover Sheet. A form Amendment Cover Sheet shall be available from the Clerk's Office upon request, and, if applicable:

(b) ***List of Creditors Added:*** When an amendment adds creditors to a bankruptcy case, the amendment shall be accompanied by a list of the creditors so added. The list shall be in the format specified by the Clerk's Office. Instructions for preparing the list are available from the Clerk's Office upon request.

(C) ***Adding Creditors in a Closed Case:*** If the case is a closed chapter 7 case with no distribution to creditors, a "Certificate and Affidavit for Adding Creditors to Schedules in a Closed Case" must be completed and filed. This form is available from the Clerk's Office upon request.

RULE 1014-2 DECLARATION OF DIVISIONAL VENUE

At the time of filing a bankruptcy petition, counsel, or a *pro se* debtor, shall file with the petition a properly completed Declaration of Divisional Venue form. This form will be provided by the Clerk's Office upon request.

RULE 1015-1 JOINT ADMINISTRATION OF ESTATES

In all joint petitions filed with the Court, the case will be administered through joint administration of the estates unless the trustee or other interested party files an objection to joint administration within ten days after the meeting of creditors and gives notice of a hearing date on such objection.

RULE 1017-1 CONVERSION

(A) ***Schedule of Unpaid Debts:*** Within fifteen days after conversion of a case, the debtor shall file an original and sufficient copies pursuant to LBR 1007-1(G) of either:

(1) a schedule of unpaid debts incurred after commencement of the original bankruptcy case, and a list of creditors in the format required by the Clerk's Office, or

(2) a certification that no unpaid debts have been incurred since the commencement of the case.

(B) ***Filing of Schedule of Unpaid Debts:*** If the debtor fails to file the schedule and list referred to in paragraph (A)(1) of this Local Bankruptcy Rule on the date of conversion of the case, any such subsequent filing shall be treated as an amendment under LBR 1009-1 and the debtor shall give all required notices.

(C) ***RESERVED***

(D) ***Report of the Debtor in Possession or Trustee:*** The debtor in possession or trustee in a superseded case shall, within thirty days after conversion of the case, file the final report and account required by FRBP 1019(5). The order of conversion is to direct such filing. Upon failure to file the required report and account within thirty days, the United States Trustee shall certify the matter to the Court for appropriate action.

Comments

1017-1(A) Wording added for clarification and reference to the number of copies required upon conversion and the filing of the Schedule of Unpaid Debts.

1017-1(B) Change of wording necessary so that anything filed after the conversion date is to be treated as an amendment and the debtor is responsible for the noticing.

1017-1(D) It was felt that the responsibility for monitoring the filing of these reports was with the U.S. Trustee since FRBP 1019(5) requires the report go to the U.S. Trustee in the first place.

RULE 1017-2 DISMISSAL FOR SUBSTANTIAL ABUSE OF CHAPTER 7

The Clerk shall give notice of any hearing on possible dismissal under 11 U.S.C. ' 707(b). The United States Trustee and the trustee appointed in the chapter 7 case shall appear and be heard.

RULE 1020-1 SMALL BUSINESS CHAPTER 11 REORGANIZATION CASES

(A) ***Election to be Considered a Small Business in a Chapter 11 Reorganization Case.*** In a chapter 11 reorganization case, a debtor that is a small business may elect to be considered a small business by filing a written statement of election no later than sixty days after the date of the order for relief or by a later date as the Court, for cause, may fix.

(B) ***How Election Made:*** Statement of Election. A debtor's written statement of election shall state that the debtor is a small business as defined in 11 U.S.C. ' 101(51C) and that the debtor elects to be considered a small business under 11 U.S.C. ' 1121(e). A debtor's election must be made by filing with the Court a notice of the election with a certification that service of the notice was made on all creditors, parties in interest, and the United States Trustee.

Comments

1020-1(A) Change from forty-five days to sixty days required due to the amendments to the FRBP that became effective December 1, 1997.

RULE 1071-1 DIVISIONS

(A) ***District***: The Eastern District of Virginia consists of the counties, cities and towns as set forth in 28 U.S.C. §127, and the places for holding court are therein prescribed as Alexandria, Newport News, Norfolk, and Richmond.

(B) ***Divisions***: This district shall be divided into four divisions, to be designated as the Alexandria, Newport News, Norfolk, and Richmond Divisions. The place for holding court for each of said divisions shall be the city whose name the division bears, and the territory comprising, and embraced in, each of the said divisions shall be as follows:

(1) The Alexandria Division shall consist of the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park, and the counties of Arlington, Fairfax, Fauquier, Loudoun, Prince William, and Stafford, and any other city or town geographically within the exterior boundaries of said counties.

(2) The Newport News Division shall consist of the cities of Hampton, Newport News, Poquoson, and Williamsburg, and the counties of Gloucester, James City, Mathews, and York, and any other city or town geographically within the exterior boundaries of said counties.

(3) The Norfolk Division shall consist of the cities of Cape Charles, Chesapeake, Franklin, Norfolk, Portsmouth, Suffolk, and Virginia Beach, and the counties of Accomack, Isle of Wight, Northampton, and Southampton, and any other city or town geographically within the exterior boundaries of said counties.

(4) The Richmond Division shall consist of the cities of Colonial Heights, Emporia, Fredericksburg, Hopewell, Richmond, and Petersburg, and the counties of Amelia, Brunswick, Caroline, Charles City, Chesterfield, Dinwiddie, Essex, Goochland, Greenville, Hanover, Henrico, King and Queen, King George, King William, Lancaster, Lunenburg, Mecklenburg, Middlesex, New Kent, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Richmond, Spotsylvania, Surry, Sussex, and Westmoreland, and any other city or town geographically within the exterior boundaries of said counties.

(5) All of the waters, and the lands under such waters, adjacent and opposite to any city, county or town shall be a part of the division of which said city, county or town is a part, and wherever there are any waters between any city, county or town which are in different divisions, then such waters and land under them shall be considered to be in both divisions.

(6) In the event of any annexation or merger of any cities and/or counties, the land lying within the merged or annexed area shall be deemed within the exterior boundaries of the original city or county to the same intent and purpose as if the annexation or merger had not occurred, unless otherwise modified by local bankruptcy rule.

RULE 1074-1 CORPORATIONS

A voluntary petition or consent to an involuntary petition filed by a corporation shall be signed by an attorney and accompanied by a copy of the corporate resolution or other appropriate authorization, duly attested to, authorizing such filing.

RULE 2002-1 NOTICE TO CREDITORS & OTHER INTERESTED PARTIES

(A) *Proponent to Give Notice*

(1) ***Generally:*** Except as stated elsewhere in the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, these Local Bankruptcy Rules, or by order of the Court, the proponent of any action shall give notice to all parties affected thereby.

(2) ***Of Plan in Reorganization Case:*** All proponents of plans in reorganization cases shall give the notice required under FRBP 2002 (b), in a form approved by the Clerk of Court, and shall file proof of service with the Court .

(B) ***Authority for Agreements to Give Notice:*** The Clerk is authorized to enter into agreements with debtors wherein they will provide all required notices to interested parties in cases where the interests of justice and efficiency are served thereby. The Clerk shall approve the form of all such notices, and proof of service shall be filed with the Court.

(C) *Notice by Publication*

(1) ***Place of Publication:*** All notices requiring advertisement shall be published at least once unless otherwise required by rule or statute, and such notice shall be published in newspapers of general circulation as follows:

(a) In proceedings at Alexandria, in the *Alexandria Gazette Packet*, the *Alexandria Journal* or the *Washington Post*.

(b) In proceedings at Newport News, in the *Daily Press*.

(c) In proceedings at Norfolk, in the *The Virginian-Pilot*.

(d) In proceedings at Richmond, in the *Times-Dispatch*.

(2) ***Time of Publication:*** All notices shall be published at least six business days prior to requiring any action, and a longer notice shall be given when required by rule or statute or where deemed proper by the Court.

(D) *Notices/Copies for United States Trustee:*

(1) *Filing of Copies of Documents for Transmittal to the United States Trustee by the Clerk:* The party submitting to the Clerk of Court for filing any document listed below shall submit a copy thereof for transmittal by the Clerk to the United States Trustee:

- (a) petition;
- (b) list of creditors;
- (c) schedule of assets and liabilities;
- (d) schedule of current income and expenditures;
- (e) statement of financial affairs;
- (f) disclosure of attorney compensation;
- (g) statement of executory contracts and unexpired leases;
- (h) statement of intent;
- (i) list of 20 largest unsecured creditors in chapter 11 case;
- (j) list of equity security holders in chapter 11 case;

(2) *Service of Documents upon the United States Trustee:* In addition to those documents, pleadings, and notices required to be timely furnished to or served upon the United States Trustee pursuant to the Federal Rules of Bankruptcy Procedure, a copy of the following documents shall be timely served on the United States Trustee by the debtor, the trustee or the moving party:

- (a) ***Chapter 11 Cases:*** All pleadings, documents, applications, plans, disclosure statements, monthly financial reports, and motions except: proofs of claim or interests.
- (b) ***Chapter 7, Chapter 12, and Chapter 13 Cases:*** All pleadings, documents, applications, monthly financial reports, and motions except: proofs of claims, or objections thereto, reaffirmation agreements, plans, lien avoidances, motions for relief from stay, and adversary proceedings not involving the trustee or United States Trustee and not raising an objection to discharge under §727.

(E) *Inspection of List of Creditors:* Where any person orders and receives a list of creditors from the Clerk's Office, it shall be the responsibility of that person to inspect the labels to ensure that all parties required to receive notice are included thereon.

(F) ***Notices to Equity Security Holders***: Unless otherwise ordered, the debtor is responsible for sending notice of the filing of the bankruptcy to equity security holders except where either:

- (1) the list of equity security holders is filed with the petition, or
- (2) the equity security holders are included on the list of creditors filed with the petition.

(G) ***Requirement of Proof of Service***: At the end of each pleading, motion or other paper required to be served upon a party, there shall be a proof of service signed by counsel (or the *pro se* party) certifying that copies were served and detailing the date and manner of service. The proof of service shall state by name the parties served if less than all parties were served.

(H) ***Definition of "Business Day"***: As used in these Local Bankruptcy Rules, "business day" shall mean any day other than a Saturday, Sunday, federal holiday or any other day on which the Clerk's Office is closed.

Comments

2002-1(D) This is a result of a suggestion from the bar to clarify and expand on service requirements on the U.S. Trustee. Whereas the Bankruptcy Code and FRBP require service of certain pleadings on the U.S. Trustee, there are many gray areas. This revision clarifies what documents not specifically required under the Bankruptcy Code and FRBP need to be served on the U.S. Trustee and what documents need to be filed with the Clerk of Court for transmittal by the Clerk to the U.S. Trustee. The prior rule only related to documents and pleadings in Chapter 11 cases, whereas this revision covers all chapters.

2002-1(E) Reference to the mailing labels has been deleted to reflect elimination of Item 15 of the Miscellaneous Fee Schedule to Bankruptcy Courts for mailing labels. If a party requests addresses or mailing labels and does not have access to PACER, the Court will provide a list of creditors in lieu of mailing labels.

RULE 2003-1 MEETING OF CREDITORS & EQUITY SECURITY HOLDERS

(A) ***Policy***: At the time of the original filing, the debtor or debtor's counsel may request information concerning the scheduled date and time of the meeting of creditors. If the debtor or debtor's counsel is aware that he or she will be unable to attend at the scheduled date and time, debtor or debtor's counsel may at the time of the original filing request a different date for the meeting of creditors. The Clerk may grant such a request to a date within forty days of filing.

(B) ***Dismissal for Failure to Appear***: Notice of possible dismissal for failure to attend the meeting of creditors shall be provided in the notice of §341 meeting. Upon certification by the United States Trustee that either debtor or debtor's counsel has not appeared at a meeting of

creditors, or has appeared not prepared to proceed, the Clerk shall issue an order dismissing the case.

If the order dismissing the case is subsequently vacated by the Court, the attorney for the debtor(s), or if *pro se*, the debtor(s), shall, within five days after the order is entered, obtain from the United States Trustee a new date and time for a rescheduled meeting of creditors and within ten days after obtaining the new date, give written notice of the rescheduled meeting to all creditors and other parties in interest and file proof of service with the Clerk.

(C) ***Rescheduled Meeting of Creditors:*** A meeting of creditors may be rescheduled not more than once by the United States Trustee. The attorney for the debtor(s), or if *pro se*, the debtor(s), shall obtain the date and time of the rescheduled meeting of creditors from the trustee or United States Trustee and within ten days give written notice of the rescheduled meeting of creditors to all creditors and other parties in interest. Notice shall be given in a form approved by the Clerk of Court and shall include a provision that the deadline for filing a complaint objecting to the debtor's discharge under §727(a) and §523(c) of the Code is automatically extended to the date that is 60 days after the date of the rescheduled meeting. The attorney for the debtor(s), or if *pro se*, the debtor(s) shall file proof of such service with the Clerk within five business days of the original date of the meeting of creditors.

Comments

2003-1(B) Suggestion made by the Norfolk U.S. Trustee and Chapter 13 Trustee to require the debtor to provide the proper notice of the rescheduled meeting.

2003-1(C) Suggestion made by the Norfolk U.S. Trustee and Chapter 13 Trustee to require the debtor to provide the proper notice of the rescheduled meeting. In addition, this rule now requires that the notice of the rescheduled meeting note the automatic extension of the deadline to file objections to discharge to 60 days after the new date set for the meeting. Please refer to Exhibit 8 for a copy of the approved form notice.

RULE 2004-1 EXAMINATION

(A) ***Service:*** Motions requesting examination under FRBP 2004 shall be served on the debtor, debtor's counsel, the deponent, deponent's counsel (if known), the standing trustee, and the United States Trustee and filed with the Clerk.

(B) ***Objections:*** Parties shall have five business days from the date of service to object to the motion.

(1) If an objection is filed, the movant shall request from the Court a hearing date, transmit the notice of hearing to all parties in interest, and file the notice and proof of service with the Clerk.

(2) If no objection is filed, the movant shall include in the proposed order a certification that the date set has been agreed to by the deponent and deponent's counsel (if known).

Comments

This new rule notes the requirements for examination motions and objections to them.

RULE 2015-(a)-1 REQUIRED REPORTS OF DEBTORS IN POSSESSION AND TRUSTEES

(A) ***Operating Business Reports:*** When the business of the debtor is authorized to be operated, the trustee in a chapter 7 or 11 case, the debtor in possession in a chapter 11 or 12 case, or the debtor in a chapter 13 case in which the debtor is engaged in business, shall file with the United States Trustee, with the Court and with appropriate governmental units such reports and summaries as are required under 11 U.S.C. §704(7). Debtors in possession or trustees in chapter 11 cases shall continue to file operating reports with the Court and the United States Trustee, on at least a calendar quarterly basis, until the case is converted, dismissed, or a final decree has been entered by the Court.

(B) ***Chapter 7 Liquidation Reports:*** The trustee in a chapter 7 business case in which the business is not being operated shall file semi-annual liquidation reports with the United States Trustee and with the Court.

(C) ***Chapter 11 Final or Interim Report:*** Chapter 11 cases with confirmed plans shall follow the District Chapter 11 Closing Procedure to prepare and file the final report and motion for final decree. The final report, or an interim report setting forth the status of the case and the reason why the case cannot be closed, shall be filed with the Court and a copy served on the United States Trustee within six months after entry of the confirmation order.

(D) ***Clerk to Give Notice:*** When the United States Trustee seeks to bring matters of case administration or estate administration before the Court, the Clerk shall give appropriate notice.

RULE 2016-1 COMPENSATION OF PROFESSIONALS

(A) ***Interim Compensation:*** The party seeking interim compensation or reimbursement for services under FRBP 2016 shall obtain a hearing date from the Court and shall give notice as required in FRBP 2002(a)(6) and 2002(c)(2). The party shall file with the Court proof of service evidencing proper notice of the scheduled hearing.

(B) ***Attorney's Disclosure Statement:*** Pursuant to 11 U.S.C. §329 and FRBP 2016, each attorney representing a debtor under any chapter of the Bankruptcy Code shall file an Attorney's Disclosure Statement, irrespective of the amount of fees received or requested. The Disclosure Statement, if not filed with the petition, shall be filed not later than fifteen days after the filing

of the petition. The Statement shall be filed in original only, with a certificate evidencing service upon the United States Trustee and the case trustee, if any.

(C) *For Debtor's Attorney in Chapter 13 Case:*

(1) ***Generally:*** The Court may award fees to the attorney for a debtor in a chapter 13 case with or without a hearing, at the Court's discretion. Any application for compensation filed under this provision must include the applicant's statement that the chapter 13 plan provides sufficient reserves or may be extended in time so that the payment(s) requested may be made without prejudice to any creditor.

(2) ***Fees and Expenses Requested Not in Excess of \$1,250:*** Where the application for compensation and reimbursement of expenses does not exceed \$1,250 in the aggregate, the Court may award the same, with or without a hearing, upon the following notice:

(a) ***Notice:*** The debtor's attorney shall serve a copy of the application on the debtor and the standing trustee, along with notice that they have ten days in which to file any objection.

(b) ***Proof of Service:*** With the application for compensation, the debtor's attorney shall file proof of service evidencing proper service under paragraph (C)(2)(a) of this Local Bankruptcy Rule.

(3) ***Fees and Expenses Requested in Excess of \$1,250:*** Where the application for compensation and reimbursement of expenses exceeds \$1,250 in the aggregate, the Court may award the same, with or without a hearing, upon the following notice:

(a) ***Notice:*** The debtor's attorney shall serve a copy of the application on the debtor, the standing trustee and all creditors, along with notice that they have ten days in which to file any objection.

(b) ***Proof of Service:*** With the application for compensation, the debtor's attorney shall file proof of service evidencing proper service under paragraph (C)(3)(a) of this Local Bankruptcy Rule.

(4) ***Fees and Expenses Requested After the Filing of the Petition:*** Any fee in excess of the maximum established in this rule will require an application for allowance of compensation and reimbursement of expenses by separate and distinct pleading. Any such application shall comply with 11 U.S.C. § 330, FRBP 2016 and the other provisions of this Local Bankruptcy Rule. The attorney shall not send a bill directly to the debtor. Should the debtor receive a bill from their attorney, they should send a copy of such bill to the trustee. Service and notice of the application shall be given in accordance with subsection (2) or (3) of this Local Bankruptcy Rule.

Comments

2016-1(C)(4) Revision to clarify how fees are to be handled after the filing of the petition.

RULE 2090-1 ATTORNEYS - ADMISSION TO PRACTICE

(A) ***Bar of the Court:*** Those attorneys who are admitted to practice before this Court shall comprise the Bar of the United States Bankruptcy Court for the Eastern District of Virginia.

(B) ***Qualifications for Admission to Practice:*** An attorney, to qualify for admission to practice before this Court, shall be a member in good standing of the Bar of the State of Virginia and be administered the oath of admission, upon the filing of an acceptable application to practice before the Court.

(C) ***Application and Procedure for Admission:*** Every attorney desiring admission to practice before this Court shall file with the Clerk written application therefor accompanied by an endorsement by two qualified members of the Bar of this Court stating that the applicant is of good moral character and professional reputation and is qualified to practice bankruptcy law. The Clerk of this Court shall supply such application upon request. As a part of the application, the applicant shall certify that the said applicant has within ninety days prior to the application read or reread (1) the Federal Rules of Civil Procedure (FRCP), (2) the Federal Rules of Evidence, (3) the Federal Rules of Bankruptcy Procedure (FRBP), and (4) the Local Bankruptcy Rules of this Court.

(D) ***Presentation:*** A qualified member of the Bar of this Court who has examined the credentials of the applicant and, if found sufficient, may present the applicant to the Court for admission. If admitted, the applicant shall take the oath required for admission, sign the roll of the Bar of this Court and, thereafter, be issued a certificate of qualification by the Clerk.

(E) ***Other Attorneys:***

(1) ***Western District of Virginia:*** Any attorney who is a member in good standing of the Bar of the United States Bankruptcy Court for the Western District of Virginia shall be permitted to practice in the courts of the Eastern District of Virginia upon filing with the Clerk of this Court:

(a) a certificate of the Clerk of the United States Bankruptcy Court for the Western District of Virginia stating that said attorney is a member in good standing of the Bar of that District, and

(b) a certification from the applicant stating that said attorney has, within the preceding ninety days, read the Local Bankruptcy Rules of this Court.

(2) ***Foreign Attorneys:*** An attorney from another state, the District of Columbia or a territory of the United States may appear and practice in cases upon motion of a member

of the Bar of this Court, provided that in all appearances said attorney shall be accompanied by a member of this Bar. Except where a party is not represented by counsel, any pleading or notice required to be signed by counsel must be signed by counsel who is a member of the Bar of this Court, who shall have entered an appearance of record in the case, with the office address in the state where notice can be served, and who shall have such authority that the Court can deal with that attorney alone in all matters connected with the case. Such appearance shall not be withdrawn without leave of the Court. Service of notice or other proceedings on the attorney shall be equivalent to service on the client. Where a party is not represented by counsel, the party shall include on each pleading an address within the district where notice can be served.

(3) Attorneys for the United States and any State: The following may appear and practice in this Court in the performance of their official duties: The Attorney General of the United States, any Deputy or Assistant Attorney General, any United States Attorney, Assistant United States Attorney, or attorney employed by a department or agency of the United States Government and authorized by that department or agency to represent it in court; and the Attorney General, any Deputy or Assistant Attorney General, any Commonwealth Attorney, and any Assistant Commonwealth Attorney of any state.

(F) Attorneys Filing Pleadings: All counsel presenting papers, suits or pleadings for filing, other than a request for notices under FRBP 2002(g), or making an appearance, must be members of the Bar of this Court, or must have counsel who are members of the Bar of this Court join in the pleading by endorsement. Any counsel who joins in a pleading will be held accountable for the case by the Court.

(G) Withdrawal of Appearance: No attorney who has entered an appearance in any case or proceeding shall withdraw as counsel except for cause, on order of the Court after reasonable notice to the party on whose behalf the attorney has appeared.

(H) Appearance at All Proceedings: Any attorney who is counsel of record for a debtor, or debtors, in a bankruptcy case must be present and appear at all Court proceedings involved in the case unless excused or given permission to withdraw by order of the Court.

(I) Professional Ethics: The ethical standards relating to the practice of law in this Court shall be the Canons of Professional Ethics of the American Bar Association and the Virginia State Bar now in force and as hereafter modified or supplemented.

(J) Courtroom Decorum: Counsel shall at all times conduct and demean themselves with dignity and propriety. When addressing the Court, counsel shall rise unless excused therefrom by the Court. All statements and communications to the Court shall be clearly and audibly made from a standing position at the attorneys' lectern facing the Court or the witness. Counsel shall not approach the bench unless requested to do so by the Court or unless permission is granted upon the request of counsel.

Examination of witnesses shall be conducted by counsel standing behind the lectern. Counsel shall not approach the witness except for the purpose of presenting, inquiring about, or examining the witness with respect to an exhibit. Only one attorney for each party may participate in the examination or cross-examination of a witness.

(K) ***Third-Year Law Student Practice Plan:*** If the United States District Court for the Eastern District of Virginia has in effect any plan for third-year law student practice, the provisions of said plan apply equally to practice before this Court.

(L) ***Previous Practice Clause:*** All members in good standing of the Bar of the United States District Court for the Eastern District of Virginia as of September 30, 1979, shall be deemed to be members of the Bar of the United States Bankruptcy Court for the Eastern District of Virginia.

Comments

2091-1(B) Revision required to conform with requested change to LBR 2090-1(D).

2091-1(D) Change to reflect the decision made by the Judges that attorney admissions do not have to occur in open court.

Paragraph (E)(3) is added to authorize Federal and State Attorney Generals and their assistants to appear and practice in this court in the performance of their official duties. [Changes effective 1/1/97]

RULE 3003-1 CLAIMS IN CHAPTER 11 CASES

(A) ***Claims Bar Date:*** The last date for the filing of claims, other than a claim of a governmental unit, in a chapter 11 case shall be ninety days after the date first scheduled for the meeting of creditors. The last date for a governmental unit to file a proof of claim shall be one hundred eighty days after the petition is filed in a voluntary chapter 11 case or an order for relief is entered in an involuntary chapter 11 case. The Clerk shall give notice of the date in a separate notice of bar date mailed with the notice for the meeting of creditors.

(B) ***Claims Scheduled as Disputed, Contingent or Unliquidated:*** The debtor in a chapter 11 case shall serve creditors whose claims are listed on the schedules as disputed, contingent or unliquidated with a notice of the fact within fifteen days after the later of:

- (1) the conversion of the case to chapter 11;
- (2) the filing of the schedules of liabilities; or
- (3) the filing of an amendment to the schedules of liabilities adding such creditors. The debtor shall file with the Court a certification that service of the notice was made on the affected creditors within five days after the notice is served.

Comments

The Clerk is directed to provide a separate notice of the claims bar date in chapter 11 cases. Paragraph (B) is new. [Changes effective 1/1/97]

RULE 3007-1 OBJECTIONS TO CLAIMS

(A) **Contents of Objection:** All objections to claims shall state with particularity the grounds therefore and shall set forth the relief or order sought.

(B) **How Objection Heard:** An objection to a proof of claim may be noticed for a hearing date obtained from the Clerk or may be accompanied by a notice providing opportunity for the creditor to request a hearing. If the notice of opportunity to request a hearing procedure is used, and the creditor serves and files a timely request for a hearing, *it is the responsibility of the objecting party to obtain a hearing date from the clerk and give notice to the creditor of the hearing date.* In any Division which has a regular motions day practice, the objection may be made returnable to a motions day in compliance with the motions day practice in that Division.

(C) **Number of Copies:** Each objection to claim filed with the Court shall be accompanied by a complete copy thereof.

(D) **Requirement of Written Response:** A creditor served with an objection to claim shall file and serve on the objecting party, a response thereto within 30 days of service if a notice of opportunity to request a hearing is given, or five business days prior to the hearing if the objection is accompanied by a notice of hearing. If no response is filed, the court may treat the objection as conceded, and may enter an order without holding a hearing disallowing the claim in whole or part as set forth in the objection to claim.

(E) **Notice:** Each objection to claim, whether set to request a hearing or accompanied by notice of opportunity for hearing, shall contain or be accompanied by the following notice substantially in accordance with Official Form 20B and also providing notice to the creditor in substantially the following form:

NOTICE

Under Local Bankruptcy Rule 3007-1, unless a written response and a request for hearing on this objection are filed with the Clerk of the Court and served on the objecting party and the trustee within 30 days of the service of this objection, the Court may deem any opposition waived, treat the objection as conceded, and enter an order granting the requested relief without a hearing.

Comments

The addition of this rule was made to clarify the procedures with regard to objections to claims. Given that FRBP 3007 expressly deals with objections to claims, the decision was made to add this rule and amend LBR 9013-1 as required. In addition, it notes the

use of the Official Form 20B that was approved by the Judicial Conference at its September 1997 meeting with the mandatory implementation date of March 1, 1998.

RULE 3011-1 UNCLAIMED FUNDS

(A) All unclaimed funds collected by the Court shall be immediately deposited into the United States Treasury and not into the registry of the Court.

(B) *Disposition of Unclaimed Funds*

(1) ***Requirements for Pro Se Creditor/Claimant - Self Representation-*** A request for return of an unclaimed dividend must be in writing and in the form of a motion filed with the Court. Creditor/claimant must sign a certificate of mailing reflecting that the motion was served on the United States Attorney for the Eastern District of Virginia, pursuant to 28 U.S.C. §2042, and on the United States Trustee. The motion must state:

(a) the name, address, telephone number and a brief history of the creditor from the filing of the claim to present (to reflect possible reasons for the funds not being deliverable at the time of original distribution);

(b) whether the claim has been assigned to the creditor, and, if so, copies of all documents evidencing assignment must be appended to the motion; and,

(c) whether or not the creditor/claimant believes that any other party may be entitled to the funds.

The motion must contain a certificate of a notary public, which bears the seal of the notary, that such notary has examined the motion and documents presented by the creditor/claimant establishing identity, such as: a birth certificate, unexpired passport, valid driver's license, or original social security card.

If the creditor/claimant is a corporation, it must be represented by a member of the bar of this Court. In addition, if the creditor/claimant is a successor corporation, creditor/claimant shall provide documents establishing the chain of ownership of the original corporate claimant as proof of entitlement to the claim.

(2) ***Requirements for the Representative of the Estate of a Deceased Claimant:*** The representative must comply with all requirements in paragraph (1) above. Certified copies of all probate documents to substantiate the representative's right to act on behalf of the decedent's estate must be provided as proof of entitlement.

(3) ***Requirements for any other individual representing the interest of creditor/claimant:*** The representative must be an attorney admitted to practice in accordance with these Local Bankruptcy Rules. The attorney must file a motion with the

Court for an order authorizing return of an unclaimed dividend pursuant to FRBP 9013. The motion must contain the name, address, telephone number and brief history of the creditor from the filing of the claim to present (to reflect possible reasons for the funds not being deliverable at the time of original distribution). If applicable, proof of any sale of the company, new and prior owners, a copy of the terms of any purchase agreement or stipulation by prior and new owners of right of ownership to the unclaimed funds must be provided. If the claim has been assigned to the claimant, copies of all documents evidencing assignment must be appended to the motion.

The motion must state whether or not the moving party believes that any other party may be entitled to the funds.

Movant must sign a certificate of mailing reflecting that the motion was served on the United States Attorney for the Eastern District of Virginia and on the United States Trustee.

An original power of attorney from the creditor/claimant authorizing the attorney to represent the interest of the creditor/claimant must be attached to the motion.

(4) **Action on Motion:** Twenty days following receipt of the above documentation, and if no objections have been filed, the Clerk shall prepare and submit the appropriate order to the Court. Any payment made to a claimant represented by an attorney will be issued jointly to claimant and the attorney and will be mailed to the attorney.

RULE 3015-1 CHAPTER 12 PLAN

(A) **Time for Filing:** The debtor may file a chapter 12 plan with the petition. If a plan is not filed with the petition, it shall be filed within ninety days thereafter unless the Court, pursuant to 11 U.S.C. §1221, extends the time for filing. Any motion for extension of time to file a plan shall be filed prior to the expiration of the deadline for which the debtor seeks an extension.

(B) **Objections:** Objections to confirmation of the plan shall be filed with the Court and served on the debtor, the debtor's attorney, the trustee, and on any other entity designated by the Court, not less than five business days prior to the scheduled confirmation hearing.

(C) **Hearing:** After notice as provided in subdivision (D) of this Local Bankruptcy Rule, the Court shall conduct a hearing within the time prescribed by 11 U.S.C. §1224 and rule on confirmation of the plan. If no objection is timely filed, the Court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on those issues.

(D) **Notice:** The debtor shall send notice of the hearing on confirmation to all creditors, the chapter 12 trustee, and equity security holders. The notice shall include the time fixed for filing objections to the proposed plan. Unless the Court fixes a different period, notice of the hearing shall be given not less than twenty days before the hearing. A copy of the plan shall accompany

the notice. Forthwith upon the giving of such notice, the debtor shall file proof of service with the Clerk.

(E) **Order of Confirmation:** The debtor shall prepare a proposed Order of Confirmation which recites the Court's findings under 11 U.S.C. §1225. Notice of entry thereof shall be mailed promptly by the Clerk, or some other person as the Court may direct, to the debtor, the trustee, all creditors, all equity security holders, and other parties in interest.

(F) **Retained Power:** Notwithstanding the entry of the Order of Confirmation, the Court may enter all orders necessary to administer the estate.

(G) **Dismissal:** The Clerk is to monitor the filing of chapter 12 plans. If the debtor does not, within ninety days after filing the chapter 12 petition, file either a plan or a motion to extend the time to file a plan, the Clerk shall enter an order dismissing the chapter 12 case.

(H) **Notice of Dismissal Provision:** The Clerk is directed to give notice of the dismissal provision of this Local Bankruptcy Rule to the debtor or debtor's attorney not filing a plan with the petition. The Clerk shall also give notice of this Local Bankruptcy Rule in the meeting of creditors notice.

RULE 3015-2 CHAPTER 13 PLAN REQUIREMENTS

(A) *Original Chapter 13 Plan and Related Motions*

(1) **Form of Chapter 13 Plan and Related Motions:** The only acceptable form for a Chapter 13 plan shall be that form approved by the Court for use in the Eastern District of Virginia (Exhibit 1 to this Local Bankruptcy Rule) and available from the Clerk's Office upon request. If applicable, the debtor shall include the following related motions (the "Related Motions") with the Chapter 13 plan:

(a) **Motion for Determination of Value Pursuant to 11 U.S.C. § 506(a):** In order to obtain a determination of the value of a claim or collateral pursuant to 11 U.S.C. §506(a), a debtor shall include such motion in the Chapter 13 Plan and Related Motions (Exhibit 1).

(b) **Motion for Lien Avoidance Pursuant to 11 U.S.C. § 522(f):** In order to avoid a lien pursuant to 11 U.S.C. §522(f), the debtor shall include such motion in the Chapter 13 Plan and Related Motions (Exhibit 1).

(c) **Motion for Assumption or Rejection of Executory Contracts Pursuant to 11 U.S.C. § 365:** In order to assume or reject an executory contract or unexpired lease pursuant to 11 U.S.C. §365, the debtor shall include such motion in the Chapter 13 Plan and Related Motions (Exhibit 1).

(2) *Filing of Chapter 13 Plan and Related Motions:*

(a) **Requirement:** The debtor shall file a Chapter 13 Plan and Related Motions, in the form specified in (A)(1) of this Local Bankruptcy Rule, not later than fifteen (15) days after the commencement of the chapter 13 case. The Chapter 13 Plan and Related Motions shall be filed in original and one copy and be accompanied by proof of service as required by paragraph (A)(3)(b) of this Local Bankruptcy Rule.

(b) Extension of Time to File Chapter 13 Plan and Related Motions:

(i) **Motion to Extend Time for Filing Chapter 13 Plan and Related Motions:** No motion to extend time for the filing of a Chapter 13 Plan and Related Motions shall be considered unless the same is filed not later than fifteen (15) days after the date of commencement of the chapter 13 case.

(ii) **Notice of Extension of Time to File Chapter 13 Plan and Related Motions:** If the debtor's motion to extend time to file a Chapter 13 Plan and Related Motions is granted, the debtor shall forthwith notify the trustee and all creditors of the new deadline set for filing the Chapter 13 Plan and Related Motions.

(3) Distribution of Chapter 13 Plan and Related Motions

(a) **Debtor to Distribute Chapter 13 Plan and Related Motions:** The debtor shall distribute a copy of the Chapter 13 Plan and Related Motions to all creditors, the standing trustee, and other interested parties.

(b) **Proof of Service:** The debtor shall serve the Chapter 13 Plan and Related Motions upon all required parties prior to filing the same with the Court. Any Chapter 13 Plan and Related Motions filed with the Court shall include the debtor's proof of service evidencing compliance with this Local Bankruptcy Rule.

(4) Notice of Chapter 13 Plan and Related Motions

(a) **Form of Notice:** The only acceptable form for Notice of a Chapter 13 Plan and Related Motions shall be that form approved by the Court for use in the Eastern District of Virginia (Exhibit 2 to this Local Bankruptcy Rule) and available from the Clerk's Office upon request.

(b) **Filing, Service and Proof of Service:** The Notice shall be filed and served in the same manner as the Chapter 13 Plan and Related Motions. Proof of Service shall be filed in the same manner as the Chapter 13 Plan and Related Motions.

(5) Objections to Confirmation of Plan or to Related Motions

(a) **Deadline for Filing:** Any objection to confirmation of the Plan, the Motion for Determination of Value, the Motion for Lien Avoidance or the Motion to Assume or Reject an Executory Contract or Unexpired Lease shall be filed not later than forty-five (45) days after the filing of an original Chapter 13 Plan and Related Motions.

(b) **Service of Objection:** The objecting party shall file an original and one copy of the objection with the Court and serve copies on the standing trustee, the debtor, and the debtor's attorney. The objection shall be accompanied by proof of service evidencing compliance with this requirement.

(c) **Hearings on Objections:** All timely filed objections shall be heard at the confirmation hearing, notice of which is given in the 11 U.S.C. §341 notice.

(d) **Settlement and Withdrawal of Objection:** As soon as possible after the filing of an objection, counsel are directed to communicate in an effort to settle the objection well in advance of any scheduled hearing on objection to confirmation. If such a settlement is reached, the objecting party shall forthwith file a withdrawal of objection and serve a copy on the standing trustee, the debtor and the debtor's attorney. If no other timely objection remains, the hearing on objection to confirmation will be stricken from the Court's calendar.

(6) Confirmation of Plan and Approval of Related Motions:

(a) **No Objections to Confirmation or Related Motions:** After the time for filing objections has passed and if no objection is timely filed, the Court, without hearing, may enter an order confirming the plan and granting the relief sought in the Related Motions.

(B) Modified Chapter 13 Plan and Related Motions

(1) **Time for Filing:** Subject to review by the Court, a debtor may file a modified plan or modified related motions, with one copy, before or after confirmation.

(2) **Form of Modified Chapter 13 Plan and Related Motions:** The only acceptable form to use for a modification to the Chapter 13 Plan or the Related Motions is Exhibit 1 to this Local Bankruptcy Rule including an insertion of language to identify it as a modification. Even if only a portion of the Chapter 13 Plan and Related Motions requires modification, the entire Modified Chapter 13 Plan and Related Motions must be completed.

(3) **Filing and Service of Modified Chapter 13 Plan and Related Motions:** The Modified Chapter 13 Plan and Related Motions shall be filed in original and one copy and be accompanied by proof of service as required by paragraph (A)(3)(b) of this Local Bankruptcy Rule. A copy of the Modified Chapter 13 Plan and Related Motions shall be served upon the standing trustee and all creditors. Once a modified plan or modified

related motions has been filed by a debtor, all previously filed unconfirmed plans or related motions are deemed to be withdrawn. Filing of a modified plan or modified related motions does not remove a previously scheduled hearing from the court calendar. Removal of any such hearing must be requested by the objecting party and agreed to by the Court.

(4) Notice of Modified Chapter 13 Plan and Related Motions

(a) **Form of Notice:** The only acceptable form for Notice of a Modified Chapter 13 Plan and Related Motions shall be that form approved by the Court for use in the Eastern District of Virginia (Exhibit 2 to this Local Bankruptcy Rule) and available from the Clerk's Office upon request. The Notice shall state whether it is a modification before or after confirmation and approval of the original Chapter 13 Plan and Related Motions.

(b) **Filing, Service and Proof of Service:** The Notice shall be filed and served in the same manner as the Modified Chapter 13 Plan and Related Motions. Proof of Service shall be filed in the same manner as the Modified Chapter 13 Plan and Related Motions.

(5) Objections to Confirmation of Modified Chapter 13 Plan or to Related Motions

(a) **Deadline for Filing:** Any objection to the Modified Chapter 13 Plan, the Motion for Determination of Value, the Motion for Lien Avoidance or the Motion to Assume or Reject an Executory Contract or Unexpired Lease shall be filed not later than thirty (30) days after the filing of the Modified Chapter 13 Plan and Related Motions.

(b) **Hearing on Objections:** A hearing on the objection will be scheduled by the Court and notice of such hearing will be given by the objecting party.

(6) Confirmation of Modified Chapter 13 Plan and Approval of Related Motions:

(a) **No Objections to Confirmation or Related Motions:** After the time for filing objections has passed and if no objection is timely filed, the Court, without hearing, may enter an order confirming the modified plan and granting the relief sought in the related motions.

(C) Dismissal of Case for Defects with Chapter 13 Plan and Related Motions and Notice of Chapter 13 Plan and Related Motions

(1) Dismissal of Case for Failure to Timely File or Distribute Plan and Notice

(a) **Clerk to Issue:** The Clerk shall issue an order of dismissal in any chapter 13 case not meeting the timeliness of filing requirements of subdivisions A(2), A(3), or A(4) of this Local Bankruptcy Rule.

(b) **Notice of Possible Dismissal:** The Clerk shall give notice of this Local Bankruptcy Rule to the debtor or debtor's counsel at the time the petition is filed. The Clerk shall also give notice of this Local Bankruptcy Rule in the meeting of creditors notice.

(2) **Dismissal of Case Upon Denial of Confirmation:** If the Court denies confirmation of the debtor's original or subsequently modified Chapter 13 Plan and Related Motions, the Clerk is directed to issue an order dismissing the chapter 13 case unless, within ten (10) days after denial of confirmation:

- (a) the debtor files a new Modified Chapter 13 Plan and Related Motions;
- (b) the debtor moves to convert the case to another chapter of the Bankruptcy Code except in a case converted from another chapter;
- (c) the debtor files a motion for reconsideration or appeals the denial of confirmation; or
- (d) the Court otherwise orders.

Comments

Modifications made to satisfy the due process, notice, and procedural requirements enunciated by the Fourth Circuit in Cen-Pen v. Hanson, 58 F.3d 89 (4th Cir. 1995) and In re Linkous, 990 F.2d 160 (4th Cir. 1993) and by the Bankruptcy Court in In re Rodnok, 197 B.R. 232 (Bankr.E.D. Va. 1996). The changes to this rule were implemented May 1, 1998 by Standing Order. The exhibits noted within LBR 3015-2 are attached as Exhibit 1 (Chapter 13 Form Plan and Related Motions) and Exhibit 2 (Notice of Chapter 13 Plan and Related Motions).

RULE 3016-1 CHAPTER 11 PLAN

(A) ***Transmission of Notice of Hearing on Disclosure Statement:*** The proponent seeking approval of the disclosure statement shall transmit notice of the hearing on the disclosure statement and other materials as required by FRBP 2002(b) and 3017(a). The court-approved notices, other materials and proof of service shall be filed with the Court.

(B) ***Objections to Disclosure Statement:*** Objections to the disclosure statement shall be filed with the Court not later than five business days prior to the date set for hearing on the disclosure statement.

(C) ***Transmission and Notice to Creditors and Equity Security Holders:*** Upon approval of the disclosure statement, the proponent of the plan shall transmit to all required parties such notices and

materials as required by FRBP 2002(b) and 3017(d) and shall file with the Court the court-approved notices, other materials transmitted and proof of service.

(D) **Summary of Ballots:** Any proponent of a plan in a reorganization case shall file a summary of ballots (acceptances and rejections) with the Clerk prior to the hearing on confirmation in the form approved by the Court. The ballots are not to be filed with the Clerk unless the Court so orders.

(E) **Objection to Confirmation:** Any objection to confirmation of the plan shall be filed with the Court not later than five business days prior to the date set for the hearing on confirmation. The objecting party shall serve a copy of the objection on the United States Trustee and the parties designated in FRBP 3020(b)(1).

RULE 3017-1(C) APPROVAL OF DISCLOSURE STATEMENT

(A) **Conditional Approval:** If the debtor is a small business and has made a timely election to be considered a small business in a chapter 11 case, the Court may, upon request of the plan proponent, conditionally approve the disclosure statement filed in accordance with FRBP 3016. A copy of the plan, disclosure statement and request for conditional approval of the disclosure statement shall be served on the Office of the United States Trustee. On or before conditional approval of the disclosure statement, the Court shall:

- (1) fix a time within which the holders of claims and interests may accept or reject the plan;
- (2) fix a time for filing objections to the disclosure statement;
- (3) fix a date for the hearing on final approval of the disclosure statement to be held if a timely objection is filed; and
- (4) fix a date for the hearing on confirmation.

(B) **Application of FRBP 3017:** If the disclosure statement is conditionally approved, FRBP 3017(a), (b), (c), and (e) and Local Bankruptcy Rule 3016-1(A), (B) and (C) do not apply. Conditional approval of the disclosure statement is considered approval of the disclosure statement for the purpose of applying FRBP 3017(d).

(C) **Objections and Hearing on Final Approval:** Notice of the time fixed for filing objections and the hearing to consider final approval of the disclosure statement shall be given in accordance with FRBP 2002 and may be combined with notice of the hearing on confirmation of the plan. Objections to the disclosure statement shall be filed, transmitted to the United States Trustee, and served on the debtor, the trustee, any committee appointed under the Bankruptcy Code and any other entity designated by the Court at any time before final approval of the disclosure statement or by an earlier date as the Court may fix. If a timely objection to the disclosure statement is filed, the Court shall hold a hearing to consider final approval before or combined with the hearing on confirmation of the plan.

RULE 3070-1 PAYMENTS IN CHAPTER 12 AND CHAPTER 13 CASES

(A) ***Payments to Creditors by Trustee:*** In chapter 12 and chapter 13 cases, no payment in an amount less than \$25 shall be distributed by the trustee to any creditor. Funds not distributed because of this Local Bankruptcy Rule shall be paid whenever the accumulation totals at least \$25. Any funds remaining shall be distributed with the final payment.

(B) ***Distribution of Estate Funds Upon Dismissal of Case Prior to Confirmation of Plan:***

(1) ***Noticing Fees Payable to Clerk of Court:*** The trustee shall pay all noticing fees due the Clerk out of estate funds before returning any funds to the debtor. If, pending dismissal, the funds on hand are not sufficient to pay all administrative expenses, the trustee shall pay to the Clerk the pro rata portion of the fees due.

(2) ***Notice of Proposed Distribution:*** The trustee may file a notice of proposed distribution of estate assets on hand, with copies to the debtor and debtor's counsel. The proposed distribution may include payment to the trustee for compensation as allowed by law and reimbursement of the trustee's out-of-pocket expenses incurred in the case. The notice shall state that if no objection to the proposed distribution is filed within ten days, the trustee is authorized to proceed with distribution.

(C) ***Debtor's Failure to Commence Payments in Chapter 13 Case:*** Each chapter 13 debtor shall commence payments proposed by the plan within thirty days after the plan is filed unless the Court has set some different time. If payments are not received as required, the trustee shall certify the same to the Clerk. Upon receipt of such a certification, the Clerk shall enter an order dismissing the debtor's case.

RULE 4001(a)-1 RELIEF FROM AUTOMATIC STAY

(A) ***Applicability of Contested Matter Rules:*** All motions for relief from stay, except those under paragraph (F) herein, are contested matters and are governed by FRBP 9014, 11 U.S.C. §362(d) and (e), and these Local Bankruptcy Rules.

(B) ***Caption:*** The motion for relief from stay, and any pleading or other paper (excepting exhibits) filed pursuant to such a motion, shall include the same caption as an adversary proceeding, except that the caption shall include a contested matter (CM) number where the adversary proceeding (AP) number would otherwise appear.

(C) ***Response Period:*** A separate notice of motion (OF20A) is not required, however, unless provided otherwise by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure or order of the Court. The motion for relief from stay shall clearly state and conspicuously provide the following notice:

NOTICE

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one)

If you do not wish the Court to grant the relief sought in the motion, or if you want the court to consider your views on the motion, then within fifteen (15) days from the date of service of this motion, you must file a written response explaining your position with the Court and serve a copy on the movant. Unless a written response is filed and served within this fifteen day period, the Court may deem opposition waived, treat the motion as conceded, and issue an order granting the requested relief without further notice or hearing.

If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it on or before the expiration of the fifteen day period.

You will be notified separately by the Clerk of the hearing date on the motion.

(D) **Filing Requirements:** With the original motion for relief from stay, the proponent shall also file:

- (1) the proper filing fee,
- (2) one copy of the motion,
- (3) a properly completed proof of service indicating that the movant served the motion for relief from stay upon each party required to receive notice under (E)(1) of this Local Bankruptcy Rule,
- (4) a stamped, addressed envelope for each party, including the movant, to be served by the Clerk with the notice of hearing.

(E) **Service**

(1) **Of Motion:** The movant shall serve a copy of the motion upon the debtor, and if applicable, upon:

- (a) the debtor's attorney,
- (b) the trustee,
- (c) any creditors' committee appointed in the case or its authorized representatives,
- (d) if a chapter 11 case, any additional creditors if required by FRBP 4001(a)(1), and

(e) any other party as directed by the Court.

The movant shall file, with the motion, proof of service certifying proper service of the motion.

(2) ***Of Notice of Hearing:*** The Clerk shall, within five days after the date the motion was filed, assign a hearing date and serve notice of such hearing upon the parties indicated in the proof of service filed pursuant to paragraph (D)(3) of this Local Bankruptcy Rule.

(F) ***Requests for Additional Relief:*** If a motion filed pursuant to FRBP 4001(a) requests relief beyond the termination, modification or conditioning of the automatic stay, and such additional relief is within the scope of FRBP 7001, it is deemed an adversary proceeding and it shall be accompanied by:

(1) an adversary proceeding filing fee,

(2) a properly completed Adversary Proceeding Cover Sheet

If a party seeks an expedited hearing under 11 U.S.C. §362(e), only the specific issue of the automatic stay shall be considered at such hearing, unless the Court otherwise directs.

(G) ***Relief from Codebtor Stay in Chapter 13 Cases:*** Motions for relief from a stay of action against a codebtor in a chapter 13 case are contested matters and are governed by FRBP 9014, 11 U.S.C. §1301 and these Local Bankruptcy Rules. The motion shall clearly state in the caption of the motion the subsection of 11 U.S.C. §1301 under which the party is proceeding.

(1) ***Caption:*** The caption for a motion for relief from codebtor stay, and any pleading or other paper (excepting exhibits) filed pursuant to such a motion, shall include the caption described in (B) herein.

(2) ***Service and Time for Response:*** Service shall be as set forth in paragraph (E)(1) of this Local Bankruptcy Rule. The time for response is fifteen days from the date of service of the motion. The notice served upon the codebtor in any relief action shall include notice of the response period. In addition, in a relief action under 11 U. S. C. §1301(c)(2) the notice shall include the following language: "If you do not file a written response by the deadline shown, the law provides that the stay protecting you from further legal action against you by this creditor will automatically terminate [see 11 U.S.C. §1301(d)]."

Comments

4001(a)-1(C) The notice conforms substantially with Official Form 20A so that movant is not required to serve a separate "notice of motion".

The subsection of 11 U.S.C. §1301 under which a party is proceeding must now be clearly stated in the caption of the motion for relief of codebtor stay. [Changes effective 1/1/97]

RULE 4003-2 LIEN AVOIDANCE

All motions filed under FRBP 4003(d) are contested matters and are governed by 11 U.S.C. §522(f), FRBP 9014, and these Local Bankruptcy Rules. Except as provided in LBR 3015-2 governing Chapter 13 Plan Requirements, if no response to a motion for lien avoidance is filed within fifteen days after service of the motion, relief may be granted without a hearing.

Comments

Revision required to conform with the changes to LBR 3015-2.

RULE 4008-1 REAFFIRMATION

(A) ***Notice of Rights Under 11 U.S.C. §524(d)***: The Clerk shall, within fifteen days after the discharge has been granted, give written notice to each discharged debtor of the debtor's rights under 11 U.S.C. §524(d).

(B) ***Reaffirmation Agreements***: Any individual debtor seeking to reaffirm a debt of the kind specified in 11 U.S.C. §524(c) shall file with the Clerk a summary of said reaffirmation agreement. The summary shall specify with particularity that the requirements of §524(c) have been met and shall be signed by the debtor, the debtor's attorney, if any, and the creditor. The Clerk shall, upon request, supply a form meeting the requirements of this provision.

(C) ***Court Consideration of Reaffirmation Agreement***: If the reaffirmation agreement is based on a consumer debt not secured by real property of the debtor, the reaffirming debtor or the creditor may, or if the debtor is not represented by an attorney, must request that a reaffirmation hearing be scheduled pursuant to 11 U.S.C. §524(d)(2).

(D) ***Filing of Summary of Reaffirmation Agreements in Closed Cases***: The summary of a reaffirmation agreement entered into prior to discharge in compliance with 11 U.S.C. §524(c) and §524(d) may be filed in a closed case.

Comments

4008-1(D) This new rule allows reaffirmation agreements to be one of the items that can be filed and docketed in a closed case.

RULE 5005-1 FILING OF PETITIONS, PLEADINGS AND OTHER PAPERS

(A) ***Filing in Proper Division***

(1) ***Petitions***: A petition seeking relief under the Bankruptcy Code shall be filed (or submitted by electronic means established by the Court) in the division in which the debtor's domicile, residence, principal place of business or principal assets were located for the greater part of the one hundred-eighty days immediately preceding the filing of the petition. The debtor must file with the petition, (or submit by electronic means established by the Court), a properly completed Declaration of Divisional Venue form as required by LBR 1014-2.

(2) ***All Other Papers***: All motions, pleadings, complaints and other papers relating to a bankruptcy case or proceeding shall be filed (or submitted by electronic means established by the Court) in the divisional office of the court in which the bankruptcy case is pending.

(B) ***Proponent to be Member of Bar***: Any attorney offering a petition, pleading or other paper, other than a request for notices under FRBP 2002(g), for filing on behalf of a client must be a member in good standing of the Bar of this Court.

(C) ***Requirements of Form***: All petitions, pleadings and other papers offered for filing shall meet the following requirements of form unless submitted as provided for by an electronic means established by the Court:

(1) ***Legibility***: Papers shall be plainly and legibly typewritten, printed or reproduced on one side of the paper only.

(2) ***Caption, Official Forms***: The caption and form of all petitions, pleadings, schedules and other papers shall be in substantial compliance with the Federal Rules of Bankruptcy Procedure, Official Forms and Local Bankruptcy Rules. Each paper or set of papers filed, except the petition, shall bear the debtor's name, the case number and chapter of the case to which it pertains.

(3) ***Size, Margins, etc.***: Papers, including attachments and exhibits, shall be of standard weight and letter size (8 1/2 by 11 inches), photo-reduced if necessary, with a top margin of not less than 1 1/2 inches and except for exhibits, pre-punched with two holes at the top. All multi-page pleadings and documents shall be fastened into sets at the top. All papers presented for filing at the same time shall be arranged in case number order.

(4) ***Signature Required***: All petitions, motions, pleadings and other papers shall be signed by counsel of record, or another attorney in the same firm, who shall have been admitted to practice before this Court. *Pro se* individuals shall sign on their own behalf. All papers submitted on behalf of corporations, other than proofs of claim, shall be signed by counsel.

(5) ***Identification of Attorney***: On the first page of each pleading or other paper filed with the court, the attorney filing the same shall be identified by name, State Bar number, complete mailing address, telephone number and the name of the party whom the attorney represents.

(6) ***Filing of Faxed Petitions, Pleadings and Other Papers:*** Petitions, pleadings and other papers which have been transmitted by facsimile equipment may be filed with the Court except for the List of Creditors which must be in the format specified by the Clerk's Office as required under LBR 1007-1(I). Once filed, the faxed document constitutes the original and no other copy bearing an original signature should later be filed. All applicable filing requirements must be met, including the payment of any filing fee due and the providing of the required number of copies.

(7) ***Acknowledgment Copy:*** To receive acknowledgment of filing of a petition, pleading or other document, an extra copy must be submitted in addition to the number of copies required for filing pursuant to these Local Bankruptcy Rules. If the acknowledgment copy is to be returned by mail, a self-addressed, stamped envelope, large enough to accommodate the copy being returned, must be included with the filing. Failure to submit the additional copy and/or the stamped, self-addressed envelope will result in the acknowledgment copy not being returned.

(8) ***Proof of Service:*** Proof of service must be made by declaration of the person accomplishing the service. That declaration shall include the following information:

- (a) The day of service;
- (b) The specific persons and or entities served;
- (c) The method of service employed (e.g., personal, mail, substituted, etc.);
- (d) Identification of the papers served;
- (e) The exact address at which service was made; and
- (f) The capacity in which the person was served.

The full names and addresses should be listed for each person or entity served, *including* when service is made upon the list of the twenty largest unsecured creditors and insured depository institutions as required under FRBP 7004(h). A copy of the proof of service attached to the original document filed with the Clerk shall be attached to the document *served*.

(D) ***Additional Requirements:*** The following requirements are in addition to those set out in (A) through (C) above unless provided for by an electronic means established by the Court:

(1) ***Voluntary Petitions:*** Each petition filed must include an unsworn declaration with the signature of all debtors and must be verified by the signature of the debtor's attorney, if any. More than one entity cannot be listed as the debtor, except that husband and wife may file a joint petition. Each petition filed must be accompanied by:

(a) either:

(i) the proper filing fee in a form other than personal check, or

(ii) an Application to Pay the Filing Fee in Installments accompanied by the proper first installment payment. The application must conform to the requirements of Local Bankruptcy Rule 1006-1.

(b) payment in full of the past due amount, if the debtor still owes a filing fee or portion thereof for a previously filed petition.

(c) a properly completed and signed Declaration of Divisional Venue form, as required by Local Bankruptcy Rule 1014-2.

(d) A List of Creditors, in the format specified by the Clerk's Office, as required by LBR 1007-1(I).

(e) a verification by signature of the attorney for the debtor and an unsworn declaration with the signature of all debtors.

(f) if the debtor is an individual, an acknowledged copy of the notice required by Local Bankruptcy Rule 1002-2.

(g) if the debtor is a corporation, the petition must be signed by an attorney and be accompanied by a copy of the corporate resolution authorizing the filing as required by Local Bankruptcy Rule 1074-1.

(h) if a chapter 11 petition, the List of Creditors Holding Twenty Largest Unsecured Claims, as required by Local Bankruptcy Rule 1007-1(H).

(2) **Complaints:** Each complaint commencing an adversary proceeding must be accompanied by:

(a) the proper filing fee, and

(b) a properly completed Adversary Proceeding Cover Sheet (Form B 104).

(3) **Motions for Relief from Stay:** Each motion for relief from stay must be accompanied by:

(a) the proper filing fee,

(b) one additional copy of the motion,

(c) proof of service indicating service of the motion upon the parties required to be served pursuant to Local Bankruptcy Rule 4001(a)-1(E),

(d) a stamped, addressed envelope for each party, including the movant, to receive the notice of hearing from the Clerk.

(4) ***Claims:*** Each proof of claim presented for filing must specify the name of the debtor, the case number of the applicable bankruptcy case, and must be properly signed by the claimant or the claimant's authorized agent. The number of copies required are:

(a) Chapters 7, 9 and 11 – original only

(b) Chapters 12 and 13 – original and one copy

(5) ***Amendments:*** Each amendment filed shall be accompanied by a properly completed Amendment Cover Sheet, as required by Local Bankruptcy Rule 1009-1(B).

(6) ***Chapter 13 Plan:*** As required by LBR 3015-2, each Chapter 13 Plan and Related Motions presented for filing shall be accompanied by a properly completed proof of service.

(7) ***Papers Filed Within Seventy-two Hours of Hearing:*** If any paper is filed within seventy-two hours prior to a hearing or trial in which the paper is to be considered by the Court, the proponent shall include therewith a completed "Priority Handling Cover Sheet" stating the date and time of the trial (or hearing) and the name of the assigned Judge. The computation of the seventy-two hours shall not include weekends or national holidays. The Priority Handling Cover Sheet shall be yellow in color, and the Clerk shall provide sample copies of the form upon request.

(E) ***Notice of Deficient Filing:*** The Clerk shall review each filing for compliance with the requirements of these Local Bankruptcy Rules. Those pleadings or other papers not meeting the requirements of these Local Bankruptcy Rules will receive a Notice of Deficient Filing allowing for ten days to correct the deficiency or to file a request for a hearing on the matter. Failure to cure the deficiency, or to request a hearing within the time allowed, will result in the pleading or other paper being stricken without further notice.

(F) ***Rejection of Petitions, Pleadings and Other Papers:*** The Clerk shall reject any petition, pleading, or other paper not accompanied by the proper filing fee.

Comments

5005-1(C) Changes have been made to allow for the filing of documents by electronic means provided under FRBP 5005(a)(2). For more detail on how this has been implemented on a pilot basis in the Alexandria Division see the "Order Adopting Electronic Case Filing Procedures" attached as Exhibit 3 and the "Administrative Procedures for Electronically Filed Cases" attached as Exhibit 4. It is planned that the ability to file electronically will expand to the other divisions during 1999.

5005-1(C)(3) Additional language noting the requirement that certain filings be pre-punched with two holes at the top as prescribed by the Judicial Conference. Sufficient top margin should be allowed so that neither the caption nor text is destroyed or obscured.

5005-1(C)(6) This revision is due to the problems encountered while trying to scan a faxed list of creditors and the addition of LBR 1007-1(I) which requires the list to be filed on diskette. The Instructions for Preparing Lists of Creditors has been updated to reflect this change.

5005-1(C)(7) The purpose of this addition is to clearly set forth the need for an extra copy of the item filed as well as a self-addressed, stamped envelope in order for an acknowledgment copy to be sent.

5005-1(C)(8) This addition deals with the concern in bankruptcy cases involving the adequacy of notice. In many instances, the question of proper notice could not be determined by review of the movant's certificate of service. Instead of specifically naming the intended recipients of the pleading, the certificate of service often merely indicated that service was made upon "all parties in interest" or "all necessary parties." In addition, movants often did not attach a copy of the certificate of service to the service copies of the document. It is then impossible for the Court and other affected parties to determine who was served with the document in question.

5005-1(D) This is one of the changes made to allow for the filing of documents by electronic means provided under FRBP 5005(a)(2). For more detail on how this has been implemented on a pilot basis in the Alexandria Division see the "Order Adopting Electronic Case Filing Procedures" attached as Exhibit 3 and the "Administrative Procedures for Electronically Filed Cases" attached as Exhibit 4. It is planned that the ability to file electronically will expand to the other divisions during 1999.

5005-1(D)(4) Revision providing information on the number of copies required when a claim is filed.

5005-1(D)(6) Revision required to conform with the changes to LBR 3015-2.

5005-1(F) Addition based on a decision by the Judges to clearly state that filings not accompanied by the proper filing fee will be rejected by the Clerk's Office.

Paragraph (C)(4) is amended to clarify who may sign pleadings on behalf of counsel of record. [Changes effective 1/1/97]

Paragraph (C)(6) is new. Although the court does not accept fax filings directly to its own fax machines, it will, with the adoption of this local bankruptcy rule, accept for filing papers that originated from a fax machine. Since the faxed petition, pleading or other paper constitutes an original, no other "original" should later be filed. Papers intended for filing with the court could be sent to a fax machine at the court's onsite copy service, some other copy or courier service, a law firm, or other third party. As before, the actual filing takes place when the paper is received by the Clerk's Office. [Changes effective 1/1/97]

RULE 5010-1 REOPENING CASES

A party seeking to reopen a case for purposes not related to the debtor's discharge, shall file a motion with the Court and shall give twenty days notice to all parties in interest. The motion shall be served upon the United States Trustee, the previously appointed trustee, and any party being added, if any, as a creditor or party in interest in the case. The motion shall be accompanied by the appropriate fee to reopen the case, a notice containing the hearing date as obtained from the Court and proof of service. The motion shall also state that any objections to the reopening of the case must be filed at least five business days prior to the hearing.

Comments

The appropriate fee to reopen a case must be paid when the motion is filed. [Changes effective 1/1/97]

RULE 5011-1 WITHDRAWAL OF REFERENCE

(A) ***Form of Request; Place for Filing:*** A request for withdrawal, in whole or in part, of the reference of a case or proceeding referred to the Bankruptcy Court, other than a *sua sponte* request by a bankruptcy judge, shall be by motion filed with the Clerk of the Bankruptcy Court. All such motions shall conform to LBR 9013-1 and shall be accompanied by the proper filing fee. In addition, all such motions shall clearly and conspicuously state that 'RELIEF IS SOUGHT FROM A UNITED STATES DISTRICT COURT JUDGE.'

(B) ***Stay:*** The filing of a motion to withdraw the reference does not stay proceedings in the Bankruptcy Court. The procedures relating to stay shall be those set forth in FRBP 5011.

(C) ***Designation of Record:*** The moving party shall serve on all interested parties and file with the Clerk of the Bankruptcy Court, together with the motion to withdraw the reference, a designation of those portions of the record of the case or proceeding in the Bankruptcy Court that the moving party believes will reasonably be necessary or pertinent to the District Court's consideration of the motion. Within ten (10) days after service of such designation of record, any other party may serve and file a designation of additional portions of the record. If the record designated by any party includes a transcript of any hearing or trial, or a part thereof, that party shall immediately after filing the designation, deliver to the court reporter and file with the Clerk of the Bankruptcy Court a written request for the transcript and make satisfactory arrangements for payment of its cost. All parties shall take any action necessary to enable the Clerk to assemble and transmit the record.

(D) ***Responses to Motions to Withdraw the Reference; Reply:*** Opposing parties shall file with the Clerk of the Bankruptcy Court, and serve on all parties to the matter for which withdrawal of the reference has been requested, their written responses to the motion to withdraw the reference, within ten (10) days after being served with a copy of the motion. The moving party may serve and file a reply within ten (10) days after service of a response.

(E) ***Transmittal to and Proceedings in District Court:*** When the record is complete for purposes of transmittal, but without awaiting the filing of any transcripts, the Clerk of the Bankruptcy Court shall promptly transmit to the Clerk of the District Court the motion and the portions of the record designated. After the opening of a docket in the District Court, documents pertaining to the matter under review by the District Court shall be filed with the Clerk of the District Court, but all documents relating to other matters in the bankruptcy case or adversary proceeding or contested matter shall continue to be filed with the Clerk of the Bankruptcy Court.

Comments

While this does not get raised that often within the District, this addition clarifies where the motion should be filed and puts the responsibility on parties to designate the record to go to the U.S. District Court.

RULE 5073-1 PHOTOGRAPHY, RECORDING DEVICES, AND BROADCASTING

(A) ***Photographs and Electronic Recordings:*** Except with the express written permission of the Court, photography, electronic recording, videotaping and broadcasting are not permitted in the courtroom and its environs during the progress of or in connection with judicial proceedings, whether or not court is actually in session.

(B) ***Definition of "Environs":*** "Environs", as used in this Local Bankruptcy Rule, shall include any floor on which any courtroom or hearing room is located, including all hallways, stairways, windows, and elevators immediately adjacent to any such floor.

(C) **Exception:** With the written permission of the Court and of the party or parties to be photographed, pictures may be taken of any permanent occupant of any office within the environs aforesaid when court is not in session.

RULE 5077-1 TRANSCRIPTS

(A) **Certification of Record by Reporter:** The reporter or operator of a recording device shall certify the original notes of testimony, tape recording, or other original record of the proceeding and file them promptly with the Clerk within twenty-four hours of the hearing. Where requests for transcripts are made, the original notes, tape or record shall be filed within thirty days after the request, unless the Court orders otherwise.

(B) **Copies of Transcripts Available to Public:** The Clerk shall provide copies of any filed transcript to the public upon request and the payment of prescribed copy fees, unless the Court orders that copies of the transcript not be made or that the transcript be sealed.

(C) **Use of Transcripts by Multiple Parties:** Where there are multiple parties to a particular case, a party not ordering a copy of the transcript shall not be permitted to use (on appeal or otherwise) or examine, photocopy or reproduce a copy provided to another party having ordered and paid for same.

(D) **Perfecting Record on Appeal:** No photocopied or reproduced copy of a transcript may be used by a party not ordering said transcript for the purpose of perfecting a record on appeal, but nothing herein shall preclude the use of photocopied or reproduced copies of a transcript in any brief or memorandum filed with any Court.

(E) **Payment for Transcripts:** The obligation to pay the reporter for any and all transcripts shall be the joint and several personal obligation of the attorney and the party for whose benefit the transcript was obtained to the extent so ordered. Any charges for a transcript shall be payable upon the completion of the transcript or any segment thereof when a proper bill for same has been submitted by the reporter.

RULE 6004-1 SALE OF ESTATE PROPERTY

In any matter involving title to real property, all motions or complaints and any order relating thereto shall contain the legal description of said real property sufficient to effect a proper conveyance thereof.

RULE 6004-2 USE, SALE OR LEASE OF PROPERTY

(A) **Notice:** Notice of a proposed use, sale or lease of property other than in the ordinary course of business, shall be given by the proponent of the notice, and the original notice and proof of

service shall be filed with the Court. The notice shall comply with FRBP 2002(a)(2) and 2002(c)(1).

(B) ***Objection to Proposed Use, Sale or Lease:*** An objection to a proposed use, sale or lease, other than in the ordinary course of business, shall be filed with the Court and served upon the proponent of the action not less than five business days before the date set for the proposed action. The party objecting shall obtain from the Court a hearing date on the objection and shall serve a notice of hearing. Proof of service shall be filed with the objection and notice.

(C) ***Sale of Property When Value of Estate Does Not Exceed \$2,500:*** The trustee or debtor in possession may give general notice of intent to sell property when all of the non-exempt property of the estate has an aggregate gross value of less than \$2,500. Such notice may be given at the meeting of creditors, and the Clerk is to provide notice in the meeting of creditors notice that this procedure may be followed. An objection to such sale must be filed by a party in interest and served upon the proponent of the sale not later than ten days after the meeting of creditors. The party objecting shall obtain from the Court a hearing date on the objection and shall serve a notice of hearing. Proof of service shall be filed with the objection and notice.

(D) ***Report of Sale:*** The trustee or debtor in possession shall file with the Court a report of any sale of estate property outside the ordinary course of business. The report shall be filed within thirty days after the sale with a copy to the United States Trustee.

RULE 6007-1 ABANDONMENT

(A) ***Notice of Abandonment:*** The Clerk shall give notice in the meeting of creditors notice that the trustee may, at the meeting of creditors, give notice of intention to abandon property of the estate that is burdensome or of inconsequential value to the estate. The Clerk shall give notice that parties in interest who object to such abandonment may state their oral objections at the meeting of creditors, obtain a hearing date from the Court, transmit notice of a hearing on their objection and file such notice with proof of service with the Court, within ten days after the meeting of creditors.

(B) ***Order of Court Directing Abandonment:*** Any party in interest requesting the Court to order the trustee to abandon any property of the estate shall obtain a hearing date from the Court, transmit copies of the motion and notice containing the hearing date to all parties in interest, and file with the Clerk the motion, notice and proof of service.

RULE 6008-1 REDEMPTION

A party seeking redemption of property from a lien or sale shall request from the Court a hearing date, transmit the motion and notice of hearing to all parties in interest, and file the motion, notice and proof of service with the Clerk. Provided, however, that if the redemption is uncontested the Court may direct that no hearing be held.

Comments

Change to note that the Court may direct that no hearing is required if the initial request is uncontested.

RULE 7003-1 ADVERSARY PROCEEDING COVER SHEET

At the time of filing an adversary proceeding, counsel, or a *pro se* litigant, shall file with the complaint a properly completed A.O. Form B 104, Adversary Proceeding Cover Sheet. The Clerk is directed to provide such forms to the public upon request.

RULE 7004-2 SUMMONS

(A) **Issuance:** The Clerk shall issue to the plaintiff for service a summons for each party as listed on the adversary cover sheet.

(B) **Time Limit for Service:** If a summons is not timely delivered or mailed within ten days following issuance of the summons, the party responsible for the original service shall bear the responsibility for issuance of further process.

RULE 7013-1 COUNTERCLAIMS

A filing fee in the same amount as for a complaint is due upon the filing of a counterclaim. The filing fee may be waived by the Court upon the submission of a memorandum of points and authorities in support of non-payment of the filing fee.

RULE 7016-1 PRETRIAL PROCEDURES

(A) **In Default Cases:** Where the defendant is in default and there has been no appearance on the defendant's behalf, the procedure outlined herein shall not be applicable, but the Court may direct the party not in default to appear for the purpose of noting a default, the entry of a default judgment, and for scheduling a date for trial on the issue of damages if required by law. If the party not in default fails to take action to prosecute its claim after reasonable notice to appear or take such action, the Court may dismiss the proceeding for failure to prosecute.

(B) **In All Other Cases:** In all other adversary proceedings, as promptly as possible after suit has been filed, the Court may schedule an initial pretrial conference at which trial counsel shall be present. At such pretrial conference, the Court may issue an order fixing dates for:

- (1) the amendment of pleadings and joinder of additional parties,
- (2) the completion of discovery,
- (3) the filing and hearing of motions, and
- (4) a final pretrial conference and/or trial.

(C) ***Optional Items in Scheduling Order:*** The Court may include in such order, or any supplemental order, such other provisions as are appropriate to assist in expediting the trial or other disposition of the case, and may specify the requirements of any final pretrial conference order which shall be presented to the Judge for entry at the time of the final pretrial conference. While the primary obligation of preparing the final pretrial conference order rests upon counsel for plaintiff, all counsel are requested to meet at least seven days in advance of the conference with the Court in order to discuss and prepare such order, and the Court may require such meeting of counsel by its order.

(D) ***Continuance of Dates Set in Scheduling Order:*** The parties and their counsel are bound by the dates specified in said order and no extensions or continuances thereof shall be granted in the absence of a showing of good cause. Mere failure on the part of counsel to proceed promptly with the normal processes of discovery shall not constitute good cause for an extension or continuance.

RULE 7026-1 DISCOVERY

(A) ***Limits on Interrogatories:*** Unless otherwise permitted by the Court for good cause shown, such permission being granted only upon written motion to the Court pursuant to Local Bankruptcy Rule 9013-1, no party shall serve upon any other party, at any one time or cumulatively, more than thirty written interrogatories, including all parts and sub-parts. This limit may not be waived by agreement of counsel.

(B) ***Limits on Depositions:*** Unless otherwise permitted by the Court for good cause shown, such permission being granted only upon written motion to the Court pursuant to Local Bankruptcy Rule 9013-1, no party shall take more than five depositions, whether upon oral examination pursuant to FRBP 7030, or upon written questions pursuant to FRBP 7031, upon non-parties. Any party may be deposed. This limit may not be waived by agreement of counsel.

(C) ***Objections to be in Writing:*** All objections to interrogatories, depositions, requests, or applications under FRBP 7026 through FRBP 7037, as well as all motions and replies thereto concerning discovery matters, shall be in writing. If time does not permit the filing of a written motion, the Court may waive this requirement.

(D) ***Objections to Discovery Process:*** An objection to any interrogatory, deposition, request, or application under FRBP 7026-7037, shall be served within fifteen days after service of the interrogatory, deposition, request or application, unless otherwise ordered by the Court. Any such objection shall be specific and the reasons for the objection shall be stated. Any such objection shall not extend the time within which the objecting party must otherwise answer or respond to any discovery matter not specifically objected to.

(E) ***Motions to Compel:*** After a discovery request is objected to or not timely complied with, and if not otherwise resolved, it is the responsibility of the party initiating discovery to place the matter before the Court by a proper motion pursuant to FRBP 7037, to compel an answer,

production, designation or inspection. Such motion must be accompanied by a memorandum as required by Local Bankruptcy Rule 9013-1(G).

(F) ***Other Discovery Motions:*** A motion for a protective order pursuant to FRBP 7026(c) or FRBP 7037(a)(2), or a motion to compel physical or mental examination pursuant to FRBP 7035, shall be accompanied by a memorandum as required by Local Bankruptcy Rule 9013-1(G).

(G) ***Replies to Discovery Motions:*** Replies to discovery motions mentioned in subdivisions (E), (F) and (I) herein shall be filed within ten days after service of the motion and memorandum unless otherwise ordered by the Court. Responses, if any, to all other discovery motions also shall be filed within ten days.

(H) ***Compliance with Discovery Orders:*** After the Court has ruled on a discovery motion, any answer, production, designation, inspection or examination required by the Court shall be completed within ten days after the entry of the order of the Court, unless otherwise ordered by the Court.

(I) ***Failure to Comply with Order:*** Should a party fail to comply with an order of the Court concerning discovery motions, it is the responsibility of the party objecting to such failure to comply to place the matter before the Court by a proper motion for supplementary relief pursuant to FRBP 7037. Such motion must be accompanied by a written memorandum as required by Local Bankruptcy Rule 9013-1(G).

(J) ***Consultation Among Counsel:*** Counsel are encouraged to participate in pretrial discovery conferences in order to decrease, in every way possible, the filing of unnecessary discovery motions. No motion concerning discovery matters may be filed until counsel shall have explored with opposing counsel the possibility of resolving the discovery matters in controversy. The Court will not consider any motion concerning discovery matters unless the motion is accompanied by a statement of counsel that a good-faith effort has been made between counsel to resolve the discovery matters at issue.

(K) ***Extensions:*** Depending upon the facts of the particular case, the Court in its discretion may, upon appropriate written motion by a party, allow an extension of time in excess of the time provided by the Federal Rules of Civil Procedure, these Local Bankruptcy Rules, or previous court order, within which to respond to or complete discovery or to reply to discovery motions. Any agreement between counsel relating to any extension of time is of no force or effect; only the Court, after appropriate motion directed thereto, may grant an extension of time. Unless otherwise specifically provided, such extension will be upon the specific condition that, regardless of what may be divulged by such discovery, it will not in any manner alter the schedule of dates and procedure previously adopted by the Court in the particular case.

(L) ***Unnecessary Discovery Motions or Objections:*** The presentation to the Court of unnecessary discovery motions, and the presentation to another party or non-party of unnecessary discovery requests of any kind, as well as any unwarranted opposition to proper

discovery proceedings, will subject such party to appropriate remedies and sanctions, including the imposition of costs and attorney's fees.

(M) ***Sanctions:*** Should any party or the party's attorney fail to comply with any of the provisions of this Local Bankruptcy Rule, or otherwise fail or refuse to meet and confer in good faith in an effort to narrow the areas of disagreement concerning discovery, sanctions provided by FRBP 7037, may be imposed.

(N) ***Opt-Out Provisions:*** In the interest of judicial economy, this Court has opted out of certain provisions of FRBP 7026, 7030, 7031, 7032, 7033, 7034, and 7036 as follows:

(1) The provisions of FRBP 7030(a)(2)(C) (oral depositions), 7031(a)(2)(C) (depositions by written questions), 7033(a) (written interrogatories), 7034(b) (requests for production and entry) and 7036(a) (requests for admission) that a party may not serve such discovery before the time specified in FRBP 7026(d) will not apply in this District.

(2) The provisions of FRBP 7026(a)(1) (that a party shall provide certain initial disclosure without awaiting a discovery request), 7026(d) (that a party may not seek discovery from any source before the parties have met and conferred as required by FRBP 7026(f)), 7026(f) (that the parties meet and plan for discovery prior to a scheduling conference), 7030(a)(2)(A) (that a party must obtain leave of court to take more than ten depositions), 7032(a)(3) (that a deposition taken without leave of court pursuant to a notice under FRBP 7030(a)(2)(C) shall not be used against a party who demonstrates that, when served with the notice, it was unable through the exercise of diligence to obtain counsel to represent it at the taking of the deposition), and 7033(a) (that limits the number of written interrogatories to twenty-five in number including all discrete subparts), will not apply in this District.

(O) ***Expert Disclosure:***

(1) ***Agreement upon Disclosure:*** Counsel are encouraged to agree upon the sequence and timing of the expert disclosures required by FRBP 7026. All such agreements must be in the form of a consent order entered by the Court.

(2) ***Timing of Mandatory Disclosure:*** Absent such a consent order, or unless otherwise ordered, the disclosures required by FRBP 7026(a)(2) shall be made as follows:

(a) ***Adversary Proceedings:*** In adversary proceedings, the disclosures required by FRBP 7026(a)(2) shall be first made by the plaintiff not later than sixty days before the date set for completion of discovery; then by the defendant thirty days before the date set for completion of discovery. Plaintiff shall disclose fifteen days after defendant's disclosure any evidence that is solely contradictory or rebuttal evidence to the defendant's disclosure.

(b) ***Contested Matters Except Relief from Stay:*** In contested matters, the disclosures required by FRBP 7026(a)(2) shall be made by the movant or

applicant, as the case may be, within thirty days prior to the hearing date; then by the respondent or objecting party, within ten days after the movant or applicant presents their disclosures.

(c) ***Relief from Stay:*** In relief from stay matters, the disclosures required by FRBP 7026(a)(2) shall be made by the parties within fifteen days prior to the date set for final hearing on the motion. The parties shall disclose seven days after disclosure any evidence that is solely contradictory or rebuttal evidence to each other's disclosure.

(3) ***Failure to Comply:*** Any party who fails to comply with these mandatory disclosure requirements may, at the court's discretion, be prohibited from using the undisclosed expert testimony at trial.

(4) ***General Provisions:*** For purposes of this Local Bankruptcy Rule, counterclaim-plaintiffs, cross-plaintiffs, and third-party plaintiffs shall be plaintiffs as to all elements of the counterclaim, cross-claim or third-party claim. Answers to interrogatories directed at clarification of the written reports of expert witnesses disclosed pursuant to FRBP 7026(a)(2) shall be due fifteen days after service, unless otherwise ordered.

(P) ***Filing With Court:*** Unless otherwise permitted by the Court, on its own initiative or for good cause shown by motion, discovery materials, depositions upon oral examination and upon written questions, interrogatories, requests for documents, requests for admission, and answers and responses or objections to such discovery requests shall not be filed with the pleadings or papers in any case or proceeding. Where specific discovery material may appropriately support or oppose a motion, the specific discovery material in question shall be appended as an exhibit to the motion, or in response thereto, without having been previously filed. Discovery material otherwise permitted to be used at trial may be properly so used, if otherwise admissible, without having been previously filed.

Comments

The purpose of this change is to resolve the apparent conflict between 7026-1(D) and 7026-1(P) by noting that the objection is to be served rather than filed within fifteen days after the initial discovery request. If approved, it would bring the rule into compliance with the corresponding local rule for the U.S. District Court.

Paragraph (O) is new and incorporates herein the same rule as in the U.S. District Court for the Eastern District of Virginia. [Changes effective 1/1/97]

RULE 7027-1 DEPOSITIONS

(A) ***Deposition of Party:*** Any party or representative (officer, director or managing agent) of a party filing an adversary proceeding in the proper division of this Court may ordinarily be

required to submit to a discovery deposition at a place designated within the division. Exceptions to this general rule may be made on order of the Court when the party, or representative of a party, is of such age or physical condition, or special circumstances exist, as may reasonably interfere with the orderly taking of a deposition at a place within the division. A defendant, who becomes a counter-claimant, cross-claimant or third-party plaintiff, shall be considered as having filed an action in this Court for the purpose of this Local Bankruptcy Rule. This subdivision shall not apply to an involuntary plaintiff or an interpleader plaintiff.

(B) ***Recording and Transcribing of Discovery Deposition:*** The expense of recording a deposition shall be paid by the party seeking to take same. The expense of transcribing the deposition shall be paid by any party ordering the preparation of the original. Any other party desiring a copy of said deposition shall pay for same at the copy rate. Parties may, by agreement, equally share the costs of attendance and transcribing, including such copies as desired. The costs of the original transcript shall be included in the taxable costs, but only if the prevailing party has made use of the deposition during the trial, unless the parties otherwise agree.

(C) ***Attorneys' Fees:*** Unless the services of associate counsel are retained in lieu of travel expense, it is not the policy of the Court to make an allowance of counsel fees in attending any deposition, except to the extent provided by statute and otherwise in this Local Bankruptcy Rule, but the Court reserves the right to make a reasonable allowance where the circumstances of the case may justify the same.

(D) ***Travel Expense:*** The "costs of travel" as provided in this Local Bankruptcy Rule shall consist of the actual cost of travel by air or other public transportation, or an allowance for travel by private automobile at mileage rates as set forth in 28 U.S.C. §1821, whichever means of transportation is actually used, including the cost of transportation from the office or residence to the terminal of the public transportation and from the destination terminal to the place of the taking of the deposition and/or overnight accommodations, if deemed necessary, and return. The Court may, in its discretion, make an appropriate allowance for food and lodging.

The "costs of travel" as herein defined shall apply to any witness other than a party, or representative of a party, required to attend the taking of a deposition. As to any witness attending a trial or hearing pursuant to Rule 45(e), FRCP, the expense of such costs of travel shall be taxed as costs if said witness testifies or if it is reasonably necessary for the witness to appear, but said costs of travel shall be limited to what would have been expended if said witness resided one-hundred miles or more from the place of the trial or hearing, together with such reasonable allowance, if required for the purpose of the witness testifying, for overnight accommodations and food. If the witness resides within one-hundred miles of the place of trial or hearing, the costs of travel shall be limited to the mileage and attendance fees as provided by law.

(E) ***Reviewing Depositions Prior to Jury Trials:*** Whenever depositions are expected to be presented in evidence, counsel shall, prior to the final pretrial conference or, if same are not then available, prior to the day of jury trial, review such depositions and:

- (1) extract therefrom a short statement of the qualifications of any expert witness to be read to the jury,
- (2) eliminate unnecessary and/or irrelevant matters, and
- (3) eliminate all objections and statements of counsel to avoid reading same to a jury.

In the event counsel are unable to agree on what shall be eliminated, they shall submit same to the Court for a ruling thereon before the date of trial. Failure to do so will constitute a waiver of objections.

(F) **Summaries of Depositions:** In all cases or proceedings set for bench trial, counsel shall attach to any deposition a summary of the examination of the testimony of each witness, identifying the salient points to be noted by the Court.

(G) **Reasonable Notice:** As a general rule, seven business days in advance of the contemplated taking of a deposition shall constitute reasonable notice of the taking of a deposition in the continental United States, but this will vary according to the complexity of the contemplated testimony and the urgency of taking the deposition of a party or witness at a particular time and place.

RULE 7054-1 COSTS

(A) **Taxation Generally:** Costs shall be taxed as provided by law in all actions in this Court and, if not otherwise provided by law, in accordance with these Local Bankruptcy Rules.

(B) **Payment in Advance:** All fees and costs due the Clerk in adversary proceedings shall be paid in advance except:

- (1) in actions brought on behalf of seamen,
- (2) where a party has been authorized to proceed *in forma pauperis*, or
- (3) where a party is otherwise exempt by law, such as the debtor (other than a debtor in possession) in a chapter 7, 11, 12 or 13 case, the United States, or in a proceeding where the United States Trustee, acting as trustee, or a trustee in a case under title 11 is the plaintiff, the filing fee shall be payable only from the estate and to the extent there are funds in the estate.

(C) **RESERVED**

(D) **Bonds and Security for Costs:** No bond or security for costs shall be required of parties instituting adversary proceedings, unless otherwise ordered by the Court.

(E) **Clerk to Tax:** The Clerk may tax costs in an adversary proceeding as provided by FRBP 7054(b).

RULE 7067-1 DEPOSIT IN COURT

(A) **Order Required:** The Clerk shall deposit into the registry of the Court any sum so directed by order.

(B) **Form of Order:** In addition to an appropriate caption and attorney identification, a proposed Order Directing Deposit shall include the following elements:

- (1) the name, address and telephone number of the person or other entity paying the money into the registry of the Court,
- (2) the name, address and social security number or employer tax number of the person or other entity for whom the money is being held,
- (3) the sum of money and date to be paid into the Court,
- (4) provision for the payment, when funds are disbursed, of a fee of ten percent of all interest earned by the funds while in the Court's control, and
- (5) the desired depository and specific investment instrument with the rate of interest expected to be earned thereon. If no specific deposit or investment type is specified, the Clerk will deposit the funds in an interest-bearing savings account.

(C) **Sample Order:** The Clerk's Office shall make available upon request a sample order satisfying the requirements of this Local Bankruptcy Rule.

RULE 8005-1 APPEAL BOND

(A) **Exemption From Appeal Bond:** The Commonwealth of Virginia, or any political subdivision or any office or agent thereof, shall not be required, unless otherwise ordered by the Court, to post a supersedeas bond or other undertaking which includes security for the payment of costs on appeal.

(B) **Failure to Post Appeal Bond:** In any case in which a monetary judgment is entered, and in such other cases as the Court may order, any party desiring to appeal from the adverse effect of such judgment shall be required, unless otherwise ordered by the Court, to post a supersedeas bond with sufficient security to respond to the judgment of the Court in the event of affirmance on appeal. In the event of failure to give such bond with security, the prevailing party may enforce such judgment as provided by law without regard to the pendency of said appeal.

(C) **Stipulation of Parties:** In lieu of any supersedeas bond, the parties may stipulate with respect to any agreement or undertaking. In lieu of any cost bond, the parties may stipulate with respect to any agreement or undertaking conditioned that the moneys and properties of the Court are fully protected or prepaid.

RULE 8006-1 RECORD ON APPEAL

(A) ***Record on Appeal- Exclusions:*** Unless otherwise directed by the Court, the record on appeal in any matter shall not include counsel's opening statements or arguments of counsel, including arguments of counsel on motions.

(B) ***Designating Record on Appeal:*** Unless the parties file a timely written designation of record with the Clerk pursuant to FRBP 8006 designating the papers which shall constitute the record on appeal, the Clerk shall forward to the proper appellate court a certification that no designation of record was filed.

(C) ***Copies of Record:*** The party filing a designation of items to be included in the record on appeal shall file with the designation either:

- (1) a complete and correct copy of all items designated, or
- (2) a copy request form with check payable to the Court's authorized copy service. Copy request forms are available from the Clerk's Office upon request.

RULE 9013-1 MOTIONS PRACTICE

(A) ***Definition of Motion:*** For the purposes of this Local Rule, "motion" shall include any motion, application, other request for relief from the Court, or proposed action to be taken under the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, or Local Bankruptcy Rules but shall not include:

- (1) any petition commencing a case under the Bankruptcy Code,
- (2) any complaint commencing an adversary proceeding under the Federal Rules of Bankruptcy Procedure,
- (3) any motion for relief from the automatic stay, or
- (4) any proposed order
- (5) objection to claim [see LBR 3007-1].

(B) ***Requirement of Written Motion:*** In all cases or proceedings, all motions shall be in writing unless made during a hearing or trial. If time does not permit the filing of a written motion, the Court may, in its discretion, waive this requirement.

(C) ***Grounds for, relief sought, and whether a hearing has been requested to be stated:*** All motions, responses, objections, applications (other than for compensation) and similar requests shall state with particularity the grounds therefor and shall set forth the relief or order sought. If a hearing on the motion has been set or requested by the movant, the motion shall so state.

(D) ***Number of Copies:*** Each original motion, objection, application, written memorandum, or similar request filed with the Court shall be accompanied by a complete copy thereof.

(E) ***Use of Forms:*** Forms, including motions and interrogatories, may be used only if all inapplicable references have been deleted and the proponent so certifies.

(F) ***Return Date, Conference of Counsel:*** Except as otherwise provided by an order of the Court or by the rules, all motions shall be made returnable to the time obtained from and scheduled by the Court for a hearing thereon. In any Division that has a regular motions day practice, the objection may be made returnable to a motions day in compliance with the motions day practice in that Division. Before requesting a hearing date on any motion, the proponent shall confer with opposing counsel, in person or by telephone, in a good-faith effort to narrow the area of disagreement.

(G) ***Memorandum of Points and Authorities:***

(1) All motions shall be accompanied by a written memorandum setting forth a concise statement of the facts and supporting reasons, along with a citation of the authorities upon which the movant relies, unless otherwise directed by the Court and except as noted below. The memorandum and the motion or response thereto, may be combined in a single pleading.

(2) A memorandum need not accompany a motion or response thereto:

(a) for a more definite statement,

(b) for an extension of time to respond to pleadings, unless the time has already expired,

(c) for a default judgment,

(d) solely related to discovery matters, except as set forth in Local Bankruptcy Rule 7026-1(E),(F), and (I),

(e) for a continuance,

(f) for a voluntary dismissal or conversion under chapters 7, 11, 12 or 13 of Title 11, United States Code, or

(g) that is stipulated to by all parties in interest.

(h) to avoid a lien pursuant to §522(f)

(H) ***Responses to Motions***

(1) ***Requirement of written response:*** Except as otherwise provided by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, these Local Bankruptcy Rules, or by order of the Court, responses in opposition to motions must be in writing, state with particularity the grounds therefor, be filed with the Court and served upon all parties affected thereby and the United States Trustee.

(2) ***Requirement of memorandum:*** Unless otherwise directed by the Court, except as herein above noted, the party filing a response in opposition to a motion shall file therewith a memorandum of points and authorities setting forth a concise statement of the facts and supporting reasons, along with a citation of the authorities upon which the party relies. The memorandum and the motion or response thereto, may be combined in a single pleading.

(3) ***Time for filing response and memorandum:***

(a) ***Where no hearing has been set or requested,*** the opposing party may file a response, with a supporting memorandum, within ten days but not thereafter without leave of the Court unless the motion relates to a matter for which a twenty day notice is required under FRBP 2002(a), in which event a response may be filed within twenty days. The movant may file a rebuttal memorandum within three business days after the filing of the opposing party memorandum. For good cause, the responding party may be given additional time or may be required to file a response, memorandum, and supporting documents within such shorter period of time as the Court may specify.

(b) ***Where hearing has been set on at least twenty days notice,*** the opposing party may file a response, with a supporting memorandum, not later than five business days before the date of the hearing.

(c) ***Where hearing has been set on less than twenty days notice,*** the opposing party may file a response, with a supporting memorandum, not later than two business days before the date of the hearing.

(d) ***When objection to a claim is filed,*** the opposing party may file a response, with supporting memorandum, within thirty days of the filing of the objection. If no response is filed, the Court may enter an order without a hearing.

(4) ***Effect of not timely filing an objection with a supporting memorandum:*** If a response with a supporting memorandum is not timely filed and served, the Court may deem the opposition waived, treat the motion, application, pleading, or proposed action as conceded, and enter an appropriate order granting the requested relief. If no objection with supporting memorandum is timely filed, the movant shall, within ten days thereafter, file and serve a proposed order which satisfies the requirements of Local Bankruptcy Rule 9022-1.

(I) **Summary Judgment - Time of Filing:** A party desiring to file a motion for summary judgment must act with reasonable dispatch. No motion for summary judgment will be considered unless filed within a reasonable time prior to the date of trial, thus permitting time for the Court to hear arguments and consider the merits after completion of the schedule specified in this Local Bankruptcy Rule.

(J) **Continuances:** A motion for continuance of a hearing or trial date shall not be granted by mere agreement of counsel. Any such motion will be considered by the Court only in the presence of all counsel, and no continuance will be granted other than for good cause and upon such terms as the Court may impose.

(K) **Extensions:** Any request for an extension of time relating to motions must be in writing and, in general, will be looked upon with disfavor.

(L) **Determination of Motions Without Oral Hearing:** In accordance with Rule 78, F.R.C.P., the Court may rule upon motions without an oral hearing, unless otherwise required by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, or these Local Bankruptcy Rules.

(M) **Giving Notice of Motion or Hearing:**

(1) **Where no hearing is requested or required:** The notice of any motion where no hearing is required or requested (i.e., a notice of opportunity for a hearing, where a hearing is set only if a response is filed objecting to the requested relief or requesting a hearing), shall contain language substantially in accordance with Official Form 20A and setting forth the requirement of a response under subparagraph (H)(3)(a) in substantially the following form:

NOTICE

Under Local Bankruptcy Rule 9013-1, unless a written response to this motion and supporting memorandum are filed with the Clerk of Court and served on the moving party within ten [*or twenty*] days of the service of this notice objecting to the relief requested, the Court may deem any opposition waived, treat the motion [*or application or proposed action*] as conceded, and issue an order granting the requested relief without further notice or hearing.

(2) **Where a hearing is required or requested:** The notice of any motion where a hearing is required or requested shall contain language substantially in accordance with Official Form 20A and setting forth the requirement of a response under subparagraph (H)(3)(b) or (H)(3)(c) in substantially the following form:

NOTICE

Under Local Bankruptcy Rule 9013-1, unless a written response to this motion and supporting memorandum are filed with the Clerk of Court and served on the moving party within five [*or two*] business days before the scheduled hearing

date, the Court may deem any opposition waived, treat the motion [*or application or proposed action*] as conceded, and issue an order granting the requested relief without further notice or hearing.

(N) ***Request for Expedited Hearing:*** A motion requesting an expedited hearing shall be accompanied by a Priority Handling Cover Sheet and a certification verifying that the proponent:

- (1) has carefully examined the matter and concluded that there is a true need for an emergency hearing,
- (2) has not created the emergency through any lack of due diligence, and
- (3) has made a *bona fide* effort to resolve the matter without hearing.

(O) ***Cancellation of Scheduled Hearings:*** It is the responsibility of counsel for the plaintiff/movant to advise the Court of any settlement or any other valid reason that a Court scheduled pretrial conference, hearing or trial need not be conducted. Counsel are advised to provide the Court with such notification as far in advance of any such conference, hearing or trial as is practical under the circumstances. Failure of such counsel to properly and timely notify the Court may result in the imposition of sanctions.

Comments

9013-1(A) Revision required to conform with the addition of LBR 3007-1.

9013-1(D) Change recommended to add written memorandum to the list of items requiring an additional copy at the time of filing.

9013-1(F) Change recommended to note the procedure to be used in those Divisions where a regular motions day practice is in place.

9013-1(J) Change recommended to make the provisions for continuances applicable also to hearings.

9013-1(M) These changes note the use of Official Form 20A approved by the Judicial Conference at its September 1997 meeting with the mandatory implementation date of March 1, 1998.

New paragraph (H)(3)(d) sets the time period for filing a response to the filing of an objection to a claim. Paragraph (M) is rewritten to include the language for the notice of opportunity to respond. Paragraph (N) is amended to emphasize the need for a Priority Handling Cover Sheet for requests for expedited hearing. Paragraph (O) is new and includes rules for canceling scheduled hearings. [Changes effective 1/1/97]

RULE 9016-1 SUBPOENAS

(A) ***Request for Subpoena:*** Requests for subpoenas shall be in writing and, except as provided in subdivision (G) with respect to a subpoena for a deposition to be taken in a proceeding pending in another jurisdiction, signed by counsel qualified to practice in this Court and noted of record in the action in which the subpoenas are to issue. Attorneys admitted to practice in this Court may also issue and sign a subpoena on behalf of:

- (1) a court in which the attorney is authorized to practice; or
- (2) a court for a district in which a deposition or production is compelled by the subpoena, if the deposition or production pertains to an action pending in a court in which the attorney is authorized to practice.

Individuals appearing *pro se* may apply for subpoenas in their own behalf.

Each request for subpoena shall:

- (1) be accompanied by a subpoena which has been completed except for issuance by the Clerk, and
- (2) unless the party is exempt therefrom, be accompanied by a check made payable to the witness for at least one day's attendance plus mileage at the rate allowed by law.

(B) ***Return Date of Subpoenas:*** All subpoenas shall be made returnable to the place, date and time of trial or hearing unless otherwise ordered by the Court.

(C) ***Service of Subpoenas:*** Unless the party requesting same is:

- (1) authorized to proceed *in forma pauperis* pursuant to 28 U.S.C. §1915, or is a seaman authorized to proceed under 28 U.S.C. §1916,
- (2) the United States or an officer or agency of the United States, or
- (3) otherwise ordered by the Court,

all subpoenas shall be served by a person who is not a party or otherwise interested in the proceeding and is not less than eighteen years of age. Proof of service by such person shall be made as provided for proof of service for summons and complaint in FRBP 7004(a). The person serving the subpoena shall make proof of service thereof to the Court promptly and in any event within the time during which the person served must respond to the subpoena. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to the party summoned the fee for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the United States or an officer or agency thereof, fees and mileage need not be tendered. Mileage shall be computed and tendered even though the witness to be subpoenaed lives within the city limits. The Marshal, deputy marshal,

or any other person serving subpoenas shall do so only in strict compliance with this Local Bankruptcy Rule, except that a party authorized to proceed *in forma pauperis* need not tender witness and mileage fees.

(D) ***Subpoenas to Officials:*** Without permission of the Court first obtained, no subpoena shall be issued for the attendance at any hearing, trial or deposition of (1) the Governor, Lieutenant Governor, or Attorney General of any State; (2) the Judge of any court; (3) the President or Vice President of the United States; (4) any member of the President's Cabinet; (5) any Ambassador or Consul; (6) any member of the United States Congress; or (7) any military officer holding the rank of Admiral or General.

(E) ***Subpoena Duces Tecum:*** Whenever a subpoena *duces tecum* has been directed to any person to produce any books, papers, documents or tangible things to any court and to attend and give testimony at the time scheduled for the trial, taking of depositions or other hearing, the person requested therein to produce, or whenever all parties agree, an alternate, shall produce such items to the Clerk on or before 9:00 a.m. on the day designated, or prior thereto if ordered by the Court, to enable counsel to review the same prior to commencement of the trial or the hearing. Provided, however, if a party has good reason not to produce and surrender custody of same to the Clerk, that party shall so advise the Court in writing promptly upon receipt of the subpoena to enable the Court to rule on the objection. Counsel are required to promptly inspect said items so as to enable the trial to proceed promptly.

The provisions hereof are not intended in any way to change or modify the provisions of FRBP 7026 or 9016 or any other applicable Federal Rule of Bankruptcy Procedure or Federal Rule of Civil Procedure, but to supplement the provisions of FRBP 9016.

(F) ***Timely Requests for Subpoenas:*** All requests for the issuance of subpoenas for the attendance of witnesses at hearings or trials shall be filed with the Clerk not later than fourteen days before the date upon which the witness will be directed to appear. If the request is made within fourteen days prior to the date of the trial or hearing, it may be issued by the Clerk but no continuance will be granted if said witness fails to appear even though served.

(G) ***Deposition Subpoenas:*** Proof of service of a notice to take depositions as provided in Rules 30(a) and 31(a), FRCP, constitutes sufficient authorization for the issuance of a subpoena by the Clerk for the district in which the deposition is to be taken for the attendance of persons named or described therein. The subpoena may command the person to whom it is directed to produce designated books, papers, documents or tangible things which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by Rule 26(b), FRCP, but in that event the subpoena will be subject to the provisions of subdivision (b) of Rule 30 and subdivision (b) of Rule 45, FRCP. No subpoena for the taking of depositions shall be issued by the Clerk unless there be exhibited to the Clerk a copy of the notice to take deposition together with a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Rule 45(d)(1), FRCP.

(H) ***Place of Taking Depositions:*** The Clerk shall issue a subpoena upon request, or an attorney may issue a subpoena in accordance with subdivision (A) of this Rule for FRBP 2004

examinations or for taking a deposition requiring the appearance of any party or witness in any city or county within the division of the district wherein the party or witness resides or is employed or transacts business, or in any city contiguous to any such county or city, without prior order of the Court; provided, however, that no such subpoena shall direct any party or witness who may reside in either Accomack or Northampton Counties to appear in any other city or county, nor may any party or witness residing in any other county or city be required to appear in Accomack or Northampton Counties, unless said party or witness is employed or transacts business in the city or county wherein the deposition is to be taken, or unless otherwise ordered by the Court. Contiguous cities or counties shall be considered as such even though separated by water but only when located within the particular division of the district. The right is reserved to any party or witness directed to attend a deposition in any contiguous city to insist that said deposition be taken within the city (or county) provided by the Federal Rules of Civil Procedure upon a showing of inconvenience of travel, or infirmities of body, or age.

(I) ***Subpoenas in Blank:*** Whenever there is a question as to whether or not a subpoena in blank should be issued by the Clerk, the request shall be referred to a Judge of this Court for a final determination. Before the Clerk may issue a subpoena in blank, the Clerk shall determine the actual pendency of the action and the date and time set for hearing or trial. Except for good cause shown, a subpoena returnable in one division will not be issued out of another division. Blank subpoenas shall recite the title and number of the case and shall be complete in every detail except the name and address of the witness. Returns of service shall be made promptly and filed with the Clerk. All service shall be made strictly in accordance with these Local Bankruptcy Rules.

RULE 9017-1 EVIDENCE

(A) ***Presence of Witnesses:*** Any counsel desiring to ascertain the presence of witnesses summoned for any particular case shall, before the opening of Court, furnish the Clerk with a list of the names of such witnesses.

(B) ***Qualifications of Experts:*** Unless the qualifications of an expert witness, including any party litigant, are admitted, a duplicate written statement of such qualifications will be submitted on the morning of trial. As to experts who are expected to appear frequently, a statement of their qualifications may be filed with the Clerk in each of the divisions of the Court for use at trial. When so filed, the Clerk will maintain the statement in a file kept for that purpose. Counsel desiring to make use of the statement will be responsible for obtaining the same from the Clerk's Office.

(C) ***Hypothetical Questions:*** Any and all hypothetical questions to be propounded to any witness will be submitted in writing on the morning of trial or at such earlier time as the Court may direct.

(D) ***Physical Examination of Litigant:*** No doctor or other expert will be permitted to testify as to the nature and extent of the injuries to any litigant unless said expert has previously examined or interviewed such person, or unless such testimony is to be based on hypothetical questions.

This Local Bankruptcy Rule is not intended to limit an expert, having previously examined the party, from properly demonstrating any of the injuries of a party.

RULE 9022-1 COURT ORDERS

(A) ***Identification of Attorney Filing Proposed Order:*** On the first page of each proposed order filed with the Court, the attorney filing the same shall be identified by name, State Bar number, complete mailing address, telephone number and the name of the party whom the attorney represents.

(B) ***List, Copies and Envelopes:*** With each proposed order, the proponent shall file a list of parties, with mailing addresses indicated, who are to receive notice of entry of the same. For each party appearing on the list, the proponent shall also file:

(1) one copy of the proposed order, and

(2) for other than the United States Trustee, or standing chapter 13 trustee, a stamped envelope bearing the mailing address of the party.

(C) ***Endorsement:*** With all proposed orders, the proponent shall file either:

(1) ***Certification of Endorsement by All Parties:*** A certification that the proposed order or proposed consent order has been endorsed by all necessary parties, or

(2) ***Proof of Service:*** A certification that the proposed order has been served upon all necessary parties and indicating upon whom served and the date and manner of such service.

(D) ***Form and Content:*** Any proposed order shall be sufficient in description to stand alone without reference to any motion, pleading or other paper.

(E) ***Consent Orders:*** All proposed consent orders shall meet the requirements in (A), (B), (C), and (D) of this Local Bankruptcy Rule.

(F) ***Order After Trial, Hearing, or Other Disposition of the Matter :*** Unless the Court specifies otherwise, the prevailing party shall, in addition to the requirements in (A), (B), (C) and (D) of this Local Bankruptcy Rule, prepare a proposed order and file the same with the Court within ten (10) days after the conclusion of the trial, hearing, or other disposition of the matter at issue. If no order is filed within the required period, the Clerk's Office may issue a Notice of Failure to Prosecute. If an order is still not filed in response to that notice, the Clerk's Office may dismiss the original pleading or other paper without further notice.

Comments

9022-1(C)(1) & 9022-1(E) Minor changes have been made to include new language concerning consent orders.

9022-1(F) This language is added to clearly state the interest in seeing that supposedly resolved items are properly closed out.

Parties need to submit a stamped envelope for panel trustees.

[Changes effective 1/1/97]

RULE 9070-1 EXHIBITS

(A) ***Numerous Exhibits:*** Whenever the exhibits in any case, to be presented by either party, exceed five (5), the party intending to offer such exhibits shall place them in a binder, properly tabbed, numbered and indexed, unless otherwise ordered by the Court.

(B) ***Listing and Marking Exhibits:*** All exhibits, except such as are prepared in open court or by expert witnesses, must be listed in the final pretrial order in any adversary proceeding and shall be marked by the proponent thereof, in the manner specified by the Clerk, prior to the commencement of the trial unless the Court otherwise directs. Such exhibits, unless too large, shall be seen by opposing counsel at or before the final pretrial conference. At any final pretrial conference, the Court may rule upon the admissibility of any exhibit or reserve ruling thereon. Exhibits agreed upon shall be admitted in evidence; all others shall be considered as numbered and marked for identification.

(C) ***Number of Copies:*** An original and two copies of both the exhibits and the Exhibit List should be filed with the Court by the date set forth in the pretrial order. Sufficient copies should be made available for each opposing counsel.

(D) ***Custody and Disposition of Models and Exhibits:***

(1) ***Custody:*** After being marked for identification, exhibits of a documentary nature offered or admitted into evidence in any cause pending or tried in this Court shall be placed in the custody of the Clerk unless otherwise ordered by the Court. All other exhibits, models, and material not offered and admitted into evidence shall be retained in custody of the attorney or party producing same at trial, unless otherwise directed by the Court.

(2) ***Removal:*** Whenever any models, diagrams, exhibits or material have been placed in custody of the Clerk for introduction into evidence, and same are not admitted or marked for identification, such articles shall be removed by the party who filed them with the Clerk, unless otherwise directed by the Court, immediately following the conclusion of the trial or settlement of the case.

(E) ***Disposition of Exhibits:*** All exhibits, models, diagrams, depositions, transcripts, briefs, tables, charts or other items or material or things, introduced, tendered or marked in the trial of a matter or filed with or delivered to the Clerk in anticipation of their introduction into evidence or for use at trial, shall be withdrawn by the parties to the litigation or their counsel within thirty

days after the judgment and the time for appeal or motion for a rehearing or further hearing shall have passed. If such items, material or things are not so removed within the time stated, the Clerk may forward them to counsel or the party entitled thereto, or shall destroy or make such other disposition or use of them as the Clerk may deem appropriate.

Comments

9070-1(A) The threshold number of exhibits for binding was reduced from fifteen to five.

9070-1(C) Change to note information already included in the Instructions for Preparing Exhibit List and Pre-Marking Exhibits.

EXHIBITS

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
DIVISION

**CHAPTER 13 PLAN
AND RELATED MOTIONS**

Name of Debtor(s):

Case Number:

Note to creditors: Section A is the summary of the plan, Section B contains the detailed provisions of the plan and Section C is the debtor's budget. Except where noted otherwise, references to the "debtor" also refer to the debtor's spouse if the case is a joint case.

SECTION A - PLAN SUMMARY

A-1 DATE OF PLAN

This plan, dated _____ is:

_____ the *first* Chapter 13 plan filed in the case.

_____ a modified plan, which replaces the plan dated: _____.

That plan has / has not been confirmed by the Court

Summary of Modification

a. Plan Provision Modified by this Filing:

b. Nature of Modification:

c. Creditors Affected by Modification:

A-2. ASSETS AND LIABILITIES

On _____, the debtor

_____ filed for relief under Chapter 13.

_____ converted a previously filed case to one under Chapter 13.

Exhibits Page 2

As of that date, the debtor listed assets and liabilities as follows:

Total Assets: \$
Total Unsecured Debt including unsecured portion of secured
debt: \$
Total Secured Debt: \$

A-3. FUNDING OF PLAN

The future earnings and income of the debtor are submitted to the supervision and control of the trustee. The debtor proposes to pay the sum of \$_____ per _____ for _____ months or longer if necessary for completion of this plan according to its terms, but not more than 60 months. The total amount to be paid into the plan is \$_____.

This does/does not constitute all of the disposable income of the debtor during the period of the plan.

Payments will be made in equal installments of \$_____ every

_____ Month
_____ Twice monthly (24 payments per year)
_____ Two weeks (26 payments per year)
_____ Week

Beginning: _____.

OTHER PAYMENTS:

A-4. PAYMENT TO UNSECURED CREDITORS. Unsecured creditors with claims not entitled to priority under the United States Bankruptcy Code will receive in deferred cash payments from the trustee approximately _____% of the present value of their allowed claims, without interest. If this case were liquidated under Chapter 7, such creditors would receive a dividend of approximately _____% of their allowed claims.

SECTION B - PROVISIONS OF PLAN

B-1. ELIGIBILITY. The debtor is an individual who owed, on the date of the filing of the petition commencing this case, noncontingent, liquidated and unsecured debts totaling \$_____ and noncontingent, liquidated and secured debts totaling \$_____. The debtor has regular income and is otherwise eligible for relief under 11 U.S.C. § 109(e) of the United States Bankruptcy Code. This plan is proposed in good faith and complies with all applicable provisions of Chapter 13 and the United States Bankruptcy Code.

B-2. PAYMENTS TO PRIORITY CREDITORS

a. Priority Creditors Under 11 U.S.C. § 1326(b). The following priority creditors shall, subject to payments to secured creditors, be paid in full at or before the time of payment to remaining creditors:

1. Trustee: 10% of all sums disbursed, except any funds returned to the debtor.
2. Debtor's Attorney: \$_____ balance due of total fee of \$_____.

The attorney shall comply with Local Bankruptcy Rule 2016-1. Any fee in excess of the maximum established in L.B.R. 2016-1 will require an application for allowance of compensation and reimbursement of expenses by separate and distinct pleading. Any such application shall comply with 11 U.S.C. § 330, F.R.B.P. 2016 and L.B.R. 2016-1. The attorney shall not send a bill directly to the debtor. Should the debtor receive a bill from his/her attorney, the debtor should send a copy of such bill to the trustee.

b. Priority Creditors Under 11 U.S.C. § 1322(a)(2). The following priority creditors will be fully paid by deferred cash payments, unless the holder of such a claim agrees to be treated differently.

<u>Creditor</u>	<u>Type of Claim</u>	<u>Balance Due</u>
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B-3. CREDITORS SECURED BY PROPERTY OTHER THAN REAL ESTATE - DEBTOR TO RETAIN COLLATERAL. Creditors whose claims are secured by property other than real estate whose collateral is to be retained by the debtor shall retain their liens and be paid as indicated below. Insurance will be maintained upon such collateral at the debtor's expense, in accordance with the terms of the contract and security agreement creating such security interest.

a. To be Paid in Full Through Trustee. Creditors named below whose claims are allowed will be paid the equivalent of 100% of the present fair market value of their collateral not to exceed the balance of the obligation, in deferred cash payments. The excess of such a creditor's claim, over and above the fair market value of its collateral, will be paid as an unsecured claim.

Creditor:

Balance due: \$

Collateral description:

Replacement value: \$

Source of valuation:

Interest rate: %

Balance due to be amortized by monthly payments through trustee of \$ _____ for _____ months.

To be paid through the trustee on a fixed monthly basis as set forth above or on a pro rata basis.

The debtor hereby moves to value the collateral at \$_____ in accordance with 11 U.S.C. §506(a), F.R.B.P. 3012, and L.B.R. 3015-2.

Creditor:

Balance due: \$

Collateral description:

Replacement value: \$

Source of valuation:

Interest rate: %

Balance due to be amortized by monthly payments through trustee of \$_____ for _____ months.

To be paid through the trustee on a fixed monthly basis as set forth above or on a pro rata basis.

The debtor hereby moves to value the collateral at \$_____ in accordance with 11 U.S.C. §506(a), F.R.B.P. 3012, and L.B.R. 3015-2.

Creditor:

Balance due: \$

Collateral description:

Replacement value: \$

Source of valuation:

Interest rate: %

Balance due to be amortized by monthly payments through trustee of \$_____ for _____ months.

To be paid through the trustee on a fixed monthly basis as set forth above or on a pro rata basis.

The debtor hereby moves to value the collateral at \$_____ in accordance with 11 U.S.C. §506(a), F.R.B.P. 3012, and L.B.R. 3015-2.

Creditor:

Balance due: \$

Collateral description:

Replacement value: \$

Source of valuation:

Interest rate: %

Balance due to be amortized by monthly payments through trustee of \$_____ for _____ months.

To be paid through the trustee on a fixed monthly basis as set forth above or on a pro rata basis.

The debtor hereby moves to value the collateral at \$_____ in accordance with 11 U.S.C. §506(a), F.R.B.P. 3012, and L.B.R. 3015-2.

b. To be Paid Directly by Debtor. Creditors named below whose claims are allowed will be paid directly by the debtor in accordance with the terms of the contract and security agreement.

Creditor:

Balance due: \$

Monthly installment: \$

Collateral description:

Replacement value: \$

Source of valuation:

Creditor:

Balance due: \$

Monthly installment: \$

Collateral description:

Replacement value: \$

Source of valuation:

c. Delinquency to be Cured Through Plan, Regular Payments to be Paid Directly by the Debtor.

Creditor:

Principal balance due: \$

Description of security:

Debtor's estimation of value:

Regular monthly installment payment: \$

Payment delinquency and other defaults:

Amount: \$

_____ with interest at the rate of _____%

_____ without interest

Creditor:

Principal balance due: \$

Description of security:

Debtor's estimation of value:

Regular monthly installment payment: \$

Payment delinquency and other defaults:

Amount: \$

_____ with interest at the rate of _____%

_____ without interest

B-4. CREDITORS SECURED BY PROPERTY WHICH WILL BE SURRENDERED BY THE DEBTOR.

Upon confirmation of the plan, if not before, the debtor will surrender the collateral securing the claims of the following creditors in satisfaction of the secured portion of such creditors' allowed claims. To the extent that the collateral does not satisfy such creditor's claim, the creditor shall hold a nonpriority, unsecured claim. The entry of the order confirming the plan shall have the effect of terminating the stay of 11 U.S.C. § 362(a) as to the collateral surrendered, thereby allowing the recovery and disposition of such property according to applicable nonbankruptcy law.

Creditor:

Collateral to be surrendered:

Debtor's estimation of value: \$

Creditor:

Collateral to be surrendered:

Debtor's estimation of value: \$

B-5. CREDITORS WITH CLAIMS SECURED BY REAL ESTATE. Creditors whose claims are secured by real estate, which is to be retained by the debtor, shall retain their liens and be paid as indicated below. Insurance will be maintained upon such collateral at the debtor's expense, in accordance with the terms of the contract and deed of trust creating the lien thereon.

a. Claims Secured Only by Interest in Debtor's Principal Residence:

Creditors named below are secured only by a security interest in real estate which is the debtor's principal residence. Creditors whose claims are allowed will have any delinquency accrued, or default which occurred before the filing of the petition commencing this case, cured through the plan. All obligations of the debtor under the contract and deed of trust (except as pertains to the curing of the below-described arrearages) will be performed by the debtor in accordance with the terms of such contract and deed of trust encumbering the property.

Creditor:

Principal balance due: \$

Description:

Regular monthly installment payment: \$

Prepetition delinquency and other defaults:

Amount: \$

_____ with interest at the rate of _____%

_____ without interest

Payments to cure prepetition delinquency and other defaults to be paid:

_____ Through the trustee on a fixed monthly basis by monthly payments of \$ _____
for _____ months or on a pro rata basis.

_____ Directly by the debtor.

Regular payments accruing post petition to be paid:

_____ Through the trustee on a fixed monthly basis by monthly payments of \$ _____
for _____ months or on a pro rata basis.

_____ Directly by the debtor.

Creditor:

Principal balance due: \$

Description:

Regular monthly installment payment: \$

Prepetition delinquency and other defaults:

Amount: \$

_____ with interest at the rate of _____%

_____ without interest

Payments to cure prepetition delinquency and other defaults to be paid:

_____ Through the trustee on a fixed monthly basis by monthly payments of \$ _____
for _____ months or on a pro rata basis.

_____ Directly by the debtor.

Regular payments accruing post petition to be paid:

_____ Through the trustee on a fixed monthly basis by monthly payments of \$ _____
for _____ months or on a pro rata basis.

_____ Directly by the debtor.

b. Claims Secured by Real Property Other Than the Debtor's Principal Residence:

Creditors named below are secured by a security interest in real estate other than the debtor's principal residence. Creditors whose claims are allowed will be paid the equivalent of 100% of the present fair market value of their collateral in deferred cash payments. This will fully satisfy the secured portion of such creditor's allowed claim. The excess of such a creditor's claim over and above the fair market value of its collateral will be paid as an unsecured claim.

Creditor:

Principal balance due: \$

Description:

Debtor's estimation of value: \$

Regular monthly Installment payment: \$

Prepetition delinquency and other defaults:

Amount: \$

Payments to cure prepetition delinquency and other defaults to be paid:

_____ Through the trustee on a fixed monthly basis by monthly payments of \$ _____
for _____ months or on a pro rata basis.

_____ Directly by the debtor.

Creditor:

Principal balance due: \$

Description:

Regular monthly installment payment: \$

Prepetition delinquency and other defaults:

Amount: \$

_____ with interest at the rate of _____%

_____ without interest

Payments to cure prepetition delinquency and other defaults to be paid:

_____ Through the trustee on a fixed monthly basis by monthly payments of \$_____ for _____ months or on a pro rata basis.

_____ Directly by the debtor.

Regular payments accruing post petition to be paid:

_____ Through the trustee on a fixed monthly basis by monthly payments of \$_____ for _____ months or on a pro rata basis.

_____ Directly by the debtor.

B-6. LIEN AVOIDANCE.

a. Avoidance of Nonpossessory, Nonpurchase-Money Security Interest: The debtor claims certain property exempt on Schedule C. That property is subject to a nonpossessory, nonpurchase-money security interest of a creditor which impairs the exemption of the debtor to personal property that fits within the categories set forth in 11 U.S.C. § 522(f)(1)(B)(i), (B)(ii) or (B)(iii). The exempt property, creditor, amount of the creditor's claim and amount to be avoided and paid as an unsecured claim are set forth below.

The debtor hereby moves to avoid the following *nonpossessory, nonpurchase-money security interest liens* pursuant to 11 U.S.C. § 522(f), L.B.R. 3015-2 and L.B.R. 4003-2.

<u>Name of Creditor</u>	<u>Description of Collateral</u>	<u>Value of Collateral</u>	<u>Identity of Senior Lienholder (if any)</u>	<u>Amount of Claim of Senior Lienholder</u>
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Exhibits Page 9

b. Avoidance of Judicial Lien: The debtor claims certain property exempt on Schedule C. That property is subject to a judicial lien for a debt, other than for a debt described in 11 U.S.C. § 522(f)(1)(A)(i) and (A)(ii), which lien impairs the exemption of the debtor to the property. The creditor, debtor's interest in the property, amount of the lien, amount to be avoided and amount not to be avoided are set forth below.

The debtor hereby moves to avoid the following *judicial liens* pursuant to 11 U.S.C. §522(f), L.B.R. 3015-2 and L.B.R. 4003-2.

Name of <u>Creditor</u>	Description of <u>Collateral</u>	Value of <u>Collateral</u>	Identity of Senior <u>Lienholder (if any)</u>	Amount of Claim <u>of Senior Lienholder</u>
----------------------------	-------------------------------------	-------------------------------	--	--

c. Avoidance of Other Security Interest and/or Lien: If the debtor intends to avoid a security interest or judicial lien pursuant to other applicable sections of the United States Bankruptcy Code, then the debtor shall so state below and shall file and serve the necessary pleadings on or before the date set for the initial meeting of creditors or, if applicable, contemporaneously with the filing of any Modified Chapter 13 Plan and Related Motions.

Name of <u>Creditor</u>	Type of <u>Lien</u>	Description of <u>Collateral</u>	Basis for <u>Lien Avoidance</u>
----------------------------	------------------------	-------------------------------------	------------------------------------

B-7. UNSECURED CREDITORS NOT ENTITLED TO PRIORITY. Unsecured Creditors with claims not entitled to priority under the United States Bankruptcy Code will receive in deferred cash payments from the trustee approximately _____% of the present value of their allowed claims, without interest. If this case were liquidated under Chapter 7, such creditors would receive a dividend of approximately _____% of their allowed claims.

B-8. EXECUTORY CONTRACTS. The debtor moves for assumption or rejection of the executory contracts and leases listed below.

a. Executory Contracts to be Rejected by the Debtor. The debtor rejects the following executory contracts.

Name of Creditor	Type of Contract
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b. Executory Contracts to be Assumed by the Debtor. The debtor assumes the following executory contracts. The debtor agrees to abide by all terms of the agreement and to cure any prepetition arrearages or defaults in the manner listed below.

<u>Name of Creditor</u>	<u>Type of Contract</u>	<u>Arrears on Filing Date</u>

B-9. TITLE OF PROPERTY TO REVEST IN DEBTOR. All property of the estate shall revest in the debtor upon confirmation of the plan, subject to the provisions in the plan and confirmation order. Unless the plan provides otherwise, a secured creditor retains its lien until the allowed amount of its secured claim is paid. The terms of the debtor's prepetition agreement with a secured creditor shall continue to apply except as otherwise provided for in this plan or the order confirming the plan.

B-10. TREATMENT OF CLAIMS.

- a. Secured creditors must timely file a proof of claim to receive payment from the trustee.
- b. Before or after confirmation of the plan, a party in interest may object to a claim which is not filed in accordance with F.R.B.P. 3001 or 3002.
- c. If a claim is scheduled as unsecured and the creditor files a proof of claim alleging that the claim is secured but does not timely object to the confirmation of the plan, the creditor may be treated as unsecured for purposes of distribution under the plan. This paragraph does not limit the right of the creditor affected by the plan to seek relief from the stay or to object to the discharge of debt.
- d. If a claim is listed in the plan as secured and the creditor files a proof of claim as an unsecured creditor, the creditor will be treated as unsecured for purposes of distribution under the plan.
- e. If a claim is filed for collateral that is to be surrendered, the claim may be disallowed for purposes of distribution under the plan. An unsecured claim may be filed for any deficiency balance that may remain.
- f. If a claim is filed for a debt being paid directly by the debtor, the claim may be disallowed for purposes of distribution under the plan. This paragraph does not limit the right of the creditor to seek relief from the stay or move for dismissal should the debtor fail to make the payments as proposed in the plan.
- g. The debtor will not sell real property without an order from the court.

B-11. OTHER PROVISIONS OF THE PLAN.

 None

SECTION C - BUDGET

A photocopy of Schedules I and J, or a detailed summary thereof, is attached.

**[Note to debtor: be sure that the budget is attached to each copy of the plan
filed with the Court or served upon a party in interest]**

SECTION D - SIGNATURES

Dated: _____

Signature of Debtor

Attorney for Debtor(s) (print or type)

Signature of Joint Debtor (if applicable)

Address of Attorney

City, State, Zip

Telephone Number, Including Area Code

SECTION E - PROOF OF SERVICE

The undersigned hereby certifies that on this date the foregoing Chapter 13 Plan and Related Motions was served upon the standing trustee, all creditors, and other interested parties by mailing a complete copy of the plan, including a photocopy of the budget, to each party, by first class mail.

Dated: _____

Signature of attorney, or *pro se* debtor(s)

Printed Name(s)

EXHIBIT 2

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
_____DIVISION**

In re:

Case No:
Chapter 13

Debtor(s)

NOTICE OF CHAPTER 13 PLAN AND RELATED MOTIONS

TO¹:

NOTICE OF:

- 1) DEADLINE FOR FILING OBJECTIONS TO CONFIRMATION**
- 2) MOTION FOR VALUATION**
- 3) MOTION TO AVOID CERTAIN LIENS, AND**
- 4) ASSUMPTION OR REJECTION OF EXECUTORY CONTRACTS**

The debtor(s) has filed a Chapter 13 Plan and Related Motions with the Court seeking to adjust his debts and, if applicable, to value the collateral of secured creditors, to avoid (that is, set aside or cancel) certain liens, and to assume or reject leases and executory contracts. [If applicable] This Chapter 13 Plan and Related Motions modifies a plan which was [was not] confirmed by the Court.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

Local Bankruptcy Rule 3015-2 provides that the Chapter 13 plan will be confirmed and the related motions granted, without a court hearing, if no objection is filed within the time allowed. If you do not want the Court to confirm the plan or (if you are a secured creditor) to value your collateral or avoid your lien as provided in the plan or (if you are a party to an unexpired lease or executory contract with the debtor) to assume or reject the lease or executory contract, then on or before _____, you or your attorney must:

File a written objection and a copy with the Court at:

United States Bankruptcy Court

¹Any creditor whose collateral is to be valued, whose lien is to be avoided, or whose lease or executory contract is to be assumed or rejected must receive an individually addressed notice ***and must be served in accordance with Federal Rule of Bankruptcy Procedure 7004.***

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If you mail your objection to the Court for filing, you must mail it early enough so that the Court will receive it on or before the date stated above. You must also mail a copy to the attorney for the debtor(s) (or to the debtor(s) if the debtor(s) is not represented by counsel) and to the Chapter 13 Trustee:

Address of attorney for the debtor(s) or
debtor(s) if not represented by counsel:

Address of Chapter 13 Trustee:

If a timely objection is filed to the original Chapter 13 Plan and Related Motions, the objection and the motions, if any, will be heard at the date and time given in the **Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines** previously mailed to you by the Clerk's Office. If a timely objection is filed to a modified plan, the Court will schedule a hearing on the objection.

1. The Chapter 13 Plan and Related Motions propose to value the claims of the following creditors:

<u>Name of Creditor</u>	<u>Description of Collateral</u>	<u>Value Assigned by Debtor</u>	<u>Interest Rate</u>	<u>Estimated Balance of Credit</u>
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2. The Chapter 13 Plan and Related Motions propose to avoid judicial liens, nonpossessory, nonpurchase-money security interests or other liens of the following creditors:

<u>Name of Creditor</u>	<u>Description of Collateral</u>	<u>Value of Collateral</u>	<u>Identity of Senior Lienholder (if any)</u>	<u>Amount of Claim of Senior Lienholder</u>
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3. The Chapter 13 Plan and Related Motions propose to assume or reject an executory contract or unexpired lease with the following creditors:

(A) Assume:

<u>Name of Creditor</u>	<u>Type of Contract</u>	<u>Arrears on Filing Date</u>
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(B) Reject:

<u>Name of Creditor</u>	<u>Type of Contract</u>
-------------------------	-------------------------

REVIEW THE CHAPTER 13 PLAN AND RELATED MOTIONS CAREFULLY TO DETERMINE THE TREATMENT OF YOUR CLAIM UNDER THE PLAN.

PROOF OF SERVICE

The undersigned hereby certifies that on this date the foregoing Notice was served upon the standing trustee, all creditors, and other interested parties by mailing a complete copy of the Notice to each party, by first-class mail.

Dated: _____

Signature of attorney, or *pro se* debtor (s)

Printed Name(s)

EXHIBIT 3

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

In re:)
)
ELECTRONIC MEANS FOR FILING,) General Order No. 97-1
SIGNING, AND VERIFICATION OF)
PLEADINGS AND PAPERS)

ORDER ADOPTING ELECTRONIC CASE FILING PROCEDURES

WHEREAS, Federal Rule of Civil Procedure ("FRCP") 83 and Federal Rules of Bankruptcy Procedure ("FRBP") 5005 (a)(2), 9011, and 9029, and Local Bankruptcy Rule ("LBR") 5005-1, authorize this court to establish practices and procedures for the filing, signing, and verification of pleadings and papers by electronic means; and

WHEREAS, a proposal for Administrative Procedures for Filing, Signing and Verifying Pleadings and Papers by Electronic Means and a proposed Electronic Filing System User's Manual (collectively, the "Electronic Filing Procedures") have been reviewed by the court; and

WHEREAS, the Electronic Filing Procedures are consistent with and further the responsibility of the Clerk of the Court for the control of the court's docket under FRBP 5005, including safeguarding the integrity of the court's docket; and

WHEREAS, the Electronic Filing Procedures do not impose fees inconsistent with the present fee structure adopted by the Judicial Conference of the United States pursuant to 28 U.S.C. sections 1913, 1914, 1926 and 1930; and

WHEREAS, the Electronic Filing Procedures provide a means for the signature on pleadings and papers through the mechanism of a password, in compliance with LBR 5005-1(C)(4) and a secure mechanism for the creation and distribution of passwords; and

WHEREAS, the Electronic Filing Procedures provide adequate procedures for filing pleadings and papers by parties who are not able to access the Electronic Filing System from a remote location by modem; and

WHEREAS, the Electronic Filing Procedures provide adequate access to review and retrieve the records and dockets of this court including access by parties who are not able to access electronic records from a remote location by modem; and

WHEREAS, the Electronic Filing Procedures do not impair the ability of the Clerk of the Court to perform statistical reporting responsibilities both to the court and the Administrative Office of the United States Courts; and

WHEREAS the Electronic Filing Procedures are consistent with notice requirements of the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules:

NOW, THEREFORE, IT IS ORDERED that:

1. The Administrative Procedures for Filing, Signing and Verifying Pleadings and Papers by Electronic Means and the

Electronic Filing System User's Manual attached as Exhibits 1 and 2, respectively, establishing administrative procedures for signing, filing, and verifying documents by electronic means in this court, including the procedure for registration of attorneys and for distribution of passwords to permit electronic filing and notice of pleadings and other papers, collectively the "Electronic Filing Procedures" are hereby approved by the court.

2. The electronic filing of a petition, pleading, motion or other paper by an attorney who is a registered participant in the Electronic Filing System shall constitute the signature of that attorney under FRBP 9011 and LBR 5005-1(C)(4).

3. No attorney shall knowingly permit or cause to permit his/her password to be utilized by anyone other than an authorized employee of his/her law firm.

4. No person shall knowingly utilize or cause another person to utilize the password of a registered attorney unless such person is an authorized employee of the law firm.

5. The electronic filing of a pleading or other paper in accordance with the Electronic Filing Procedures shall constitute entry of that pleading or other paper on the docket kept by the clerk under FRBP 5003.

6. The Office of the Clerk will enter all orders, decrees, judgments, and proceedings of the court in accordance with the Electronic Filing Procedures, which shall constitute entry of the order, decree, judgment or proceeding on the docket kept by clerk under FRBP 5003 and for purposes of FRBP 9021.

7. (a) Whenever a pleading or other paper is filed electronically in accordance with the Electronic Filing Procedures, the Office of the Clerk shall serve the filing party with a "Notice of Electronic Filing" by electronic means at the time of docketing.

(b) The filing party shall serve the pleading or other paper upon all persons entitled to notice or service in accordance with the applicable rules, or, if service by first class mail is permitted under the rules, the filing party may make service in accordance with subparagraph (c) below.

(c) If the recipient of notice or service is a registered participant in the Electronic Filing System, service by electronic means of the Notice of Electronic Filing shall be the equivalent of service of the pleading or other paper by first class mail, postage prepaid.

8. Participation in the Electronic Filing System by receipt of a password from the Court, shall constitute a request for service and notice electronically pursuant to FRBP 9036. Participants in the Electronic Filing System, by receiving a password from the Court, agree to receive notice and service by electronic means.

9. The original of this order shall be filed both in accordance with the Electronic Filing Procedures with the Clerk of the Court and conventionally with the Clerk of the Court.

10. Until further order, the provisions of this order shall apply only in the Alexandria Division of this court and only in

chapter 11 cases (including adversary proceedings and contested matters in chapter 11 cases) filed on or after the effective date of this order. Amendments to this order may be entered from time to time in keeping with the needs of the Court.

11. This order shall take effect on October 30, 1997.

Dated: October 30, 1997

Martin V.B. Bostetter, Jr.
Chief Judge

Douglas O. Tice, Jr.
Judge

Stephen S. Mitchell
Judge

EXHIBIT 4

**Electronic Means for Filing, Signing and
Verification of Pleadings and Papers**

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

"Administrative Procedures for Electronically Filed Cases"

Exhibit to General Order # 97-1

ADMINISTRATIVE PROCEDURES

I. REGISTRATION FOR THE ELECTRONIC FILING SYSTEM ('System')

A. Designation of Cases. The Court shall designate which cases shall be assigned to the Electronic Filing System ('System')

B. Passwords. Each attorney admitted to practice in this Court shall be entitled to one System password to permit the attorney to participate in the electronic retrieval and filing of pleadings and other papers in accordance with the System. Registration for a password is governed by paragraph I.C.

C. Registration.

1. A registration form, in the form attached, shall be submitted for each attorney. The attached form may be duplicated for use.
2. All registration forms shall be mailed or delivered to the Office of the Clerk, United States Bankruptcy Court, Eastern District of Virginia, 200 South Washington Street, Alexandria, Virginia 22314, Attn: Regina Williams, System Department.
3. Each attorney registering for the System will receive telephonic notice from the Office of the Clerk indicating that an envelope containing the attorney's assigned System password is available for pick-up at the Office of the Clerk. Only the attorney or an authorized representative may pick up the envelope. Out of state attorneys applying for registration may communicate with the Office of the Clerk to arrange for delivery of the system password.
4. For good cause shown, including the fact that the security of an existing password may have been compromised, an attorney may change the

assigned password by contacting the Office of the Clerk/Systems Department. In the event an attorney discovers any compromise of his or her password, the attorney shall forthwith advise the Clerk of Court, Division Manager, or Systems Department Manager by telephone and, in addition, forthwith confirm the same by facsimile.

5. Once registered, an attorney/participant may withdraw from participation in the System by providing the Clerk of the Court, Chief Deputy Clerk or Systems Department Manager with notice of such withdrawal. Such notice must be in writing. Upon receipt of notice, the Office of the Clerk will immediately cancel the attorney/participant's password and will delete the attorney/participant from any applicable electronic service list.

II. ELECTRONIC FILING AND SERVICE OF DOCUMENTS

A. Filing.

1. Except as expressly provided for in paragraph III.A., below and in exceptional circumstances which prevent an attorney/participant from filing electronically, all petitions, motions, pleadings, memoranda of law, or other documents required to be filed with the Court in connection with a case assigned to the System shall be electronically filed on the System. Notwithstanding the foregoing, parties and attorneys who are not participants in the System are not required to electronically file pleadings and other papers in a case assigned to the System.
2. All documents which form part of a pleading and which are being filed at the same time and by the same party may be electronically filed together under one docket number, e.g., the motion and a supporting affidavit, with the exception of a memorandum of law. A memorandum of law should be filed separately and shown as a related document to the motion.

B. Service.

1. Whenever a pleading or other paper is filed electronically in accordance with the Electronic Filing Procedures, the Office of the Clerk shall serve the filing party with a "Notice of Electronic Filing" by electronic means at the time of docketing.
2. The filing party shall serve the pleading or other paper upon all persons entitled to notice or service in accordance with the applicable rules, or, if service by first class mail is permitted under the rules, the filing party may make service in accordance with subparagraph II.B.3 below.
3. If the recipient of notice or service is a registered participant in the Electronic Filing System, service of the Notice of Electronic Filing by electronic means shall be the equivalent of service of the pleading or other paper by first class mail, postage prepaid.

C. Signatures; Affidavits of Service.

1. Petitions, lists, schedules, statements, amendments, pleadings, affidavits, and other documents which must contain original signatures or which require verification under FRBP 1008 or an unsworn declaration as provided in 28 U.S.C section 1746, shall be filed electronically with originally executed copies maintained by the filer until 3 years after the closing of the case. The pleading or other document electronically filed shall indicate a signature e.g., 's/Jane Doe'.

D. Fees Payable to the Clerk. For filings that require a fee, application for authorization of credit card payment may be made with the financial officer of the office of the Clerk.

E. Orders. All signed orders (including, without limitation, orders to show cause)

shall be filed electronically by the presiding judge in the case. In order to facilitate such filing, the party presenting the proposed order shall provide the presiding judge with a 3.5 inch floppy disk containing the proposed order in either WordPerfect or Microsoft Word format (WordPerfect 7 is preferred), together with any attachment, exhibit or related document to be electronically filed in connection therewith. Said party shall also provide the presiding judge with a paper copy of all such documents. The Office of the Clerk will make the appropriate entry on the System to facilitate the docketing of an order.

- F. Title of Docket Entries. The person electronically filing a pleading or other document will be responsible for designating a title for the document by using one of the categories contained in Electronic Filing System User's Manual.

III. CONVENTIONAL FILING OF DOCUMENTS

- A. Conventional Filings. The following documents shall be filed conventionally and not electronically unless specifically authorized by the Court:
1. Documents to be filed under seal. A motion to file document(s) under seal shall be filed electronically; however, the actual documents(s) to be filed under seal shall be filed conventionally. The order of the Court authorizing the filing of such document(s) under seal shall be filed electronically by the presiding judge and shall indicate that the motion to file documents under seal has been "so ordered" in accordance with Paragraph II.E., above. A paper copy of the order shall be attached to the document(s) under seal and be delivered to the Clerk of Court.
 2. Exhibits. Exhibits, including but not limited to leases, notes and the like, which are not available in electronic form, shall be filed conventionally. Wherever possible, however, such documents, or the relevant portions thereof, should be electronically imaged (i.e., 'scanned') and filed using Portable Document Format (PDF).

3. Proofs of claim.

- B. Service of Conventional or 3.5 Inch Floppy Disk Filings. Pleadings or other documents which are filed conventionally or on 3.5 inch floppy disk rather than electronically shall be served in the manner provided for in, and on those parties entitled to notice in accordance with, the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules except as otherwise provided by order of the Court.

IV. PUBLIC ACCESS TO THE SYSTEM DOCKET

- A. Internet Access without a Password. Any person or organization other than those referred to in paragraph I.B.1. may access the System at the Court's Internet site at www.vaeb.uscourts.gov. Such access to the System through the Internet site will allow retrieval of the docket sheet and documents on a time delayed basis. Unless a user has a password, access to the System will be on a "read only" basis.
- B. Public Access at the Court. The public will have electronic access to the documents filed in System and to the System docket in the Office of the Clerk, for viewing during regular business hours, Monday through Friday.
- C. Conventional Copies and Certified Copies. Conventional copies and certified copies of the electronically filed documents may be purchased at the Office of the Clerk, 200 South Washington Street, Alexandria, Virginia 22314 during business hours Monday through Friday. The fee for copying and certification will be in accordance with 28 U.S.C section 1930.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division
ELECTRONIC CASE FILING SYSTEM
ATTORNEY/PARTICIPANT REGISTRATION FORM

LIVE SYSTEM

This form shall be used to register for an account on the Court's Electronic Filing System. Registered attorneys and other participants will have privileges both to electronically submit documents, and to view and retrieve electronic docket sheets and documents for all cases assigned to the Electronic Filing System. The following information is required for registration-

First/Middle/Last Name: _____

Bar ID# (if applicable): _____

Firm Name: _____

Firm Address: _____

Firm Federal ID#: _____

Voice Phone Number: _____

FAX Phone Number: _____

Internet E-Mail Address: _____

By submitting this registration form, the undersigned agrees to abide by the following rules:

- 1) This system is for use only in cases permitted by the U.S. Bankruptcy Court for the Eastern District of Virginia, Alexandria Division. It may be used to file and view electronic documents, docket sheets, and notices.

- 2) At this time, the hardware and software requirements for filing, viewing, and retrieving case documents are: a personal computer (486 minimum) running a standard platform such as

Windows, Windows 95, or Macintosh, an Internet provider using Point to Point Protocol (PPP), Netscape Navigator software version 3.0, and Adobe Acrobat Pro software to convert documents from a word processor format to a portable document format (PDF).

3) Pursuant to Federal Rule of Civil Procedure 11, Federal Rule of Bankruptcy Procedure 9011 and Local Bankruptcy Rule 5005-1(c)(4). Every pleading, motion, and other paper (except lists, schedules, statements or amendments thereto) shall be signed by at least one attorney of record or, if the party is not represented by an attorney, all papers shall be signed by the party.

An attorney's/participant's password issued by the court [combined with the user's identification], serves as and constitutes the attorney/participant's signature. Therefore, an attorney/participant must protect and secure the password issued by the court. If there is any reason to suspect the password has been compromised in any way, it is the duty and responsibility of the attorney/participant to immediately notify the court. The court will immediately delete that password from the electronic filing system and issue a new password.

4) An attorney's/participant's registration will constitute a request and an agreement to receive service of pleadings and other papers electronically pursuant to FRBP 9036, where service of pleadings and other papers is otherwise permitted by first class mail, postage prepaid.

5) I understand that by making application for a password, I agree to abide by all of the rules and regulations under the 'Administrative Procedures for Electronically Filed Cases' currently in effect, and any changes or additions that may be made to such Administrative Procedures.

Applicant's Signature

Initial of First & Last Name Last 4 Digits of SS#

Notary or Clerk/Deputy Clerk of Court

Please return to:

MIS Department,
U.S. Bankruptcy Court
Eastern District of Virginia, Alexandria Division
200 South Washington Street
Alexandria, Virginia 22314

EXHIBIT 5

**United States Bankruptcy Court
for the Eastern District of Virginia**

Instructions for Preparing Lists of Creditors on Diskette

Introduction

The automated docketing system in this court provides for the computerized processing of creditors to enable a high volume of cases to be processed within limited time constraints. Creditors can be initially loaded into the computer database for each case in one of two ways: (1) by 'scanning' a hard (paper) copy mailing matrix, or (2) 'loading' the information from a 3.5" diskette supplied at the time of filing. Directly importing the data from a diskette would be much more efficient for the Court. Additionally, since many law offices use personal computers to produce the matrix, it may save the law firm the time and the expense of printing a copy of the matrix. If your disk is unreadable or unusable by the Court, a deficiency notice will be issued.

Requirements for Submitting Mailing Matrices on Diskette

Disk Type: Must be a 3.5" diskette in an IBM-PC compatible format in any density up to 1.44MB.

File Requirements: 1) each case must be submitted with a separate disk containing the creditors with their addresses.
2) the file must be saved in a 'pure text' format (see subsection **Text Format**)
3) the file must be located in the disk's root directory and named *creditor.txt*.

File Content: The creditor list should only include the specific creditors to that particular case. **DO NOT** add the debtor, joint debtor, attorney for debtor, or US Trustee in the list of creditors as these will be added automatically.

Text Format: The creditor list saved as *creditor.txt* must be created by any computer program capable of producing an ASCII or DOS text file with the data in the proper format in order for the court's computer to read the data. Any text editor such as the DOS editor (EDIT), most word processors like WordPerfect or Microsoft Word and database management packages are capable of producing the required output. (See subsection on **File Saving and Labeling Disk**.)

Creditor Format: 1) Must be typed in Courier 10cpi font (same as 12 point on word processors).
2) Lists should be typed in a single column.
3) Each name/address must consist of no more than four (4) total lines of single spaced type. Each line must be no more than 30 characters in length, including spaces.

- 4) If 'attention' lines or account numbers are used, they should appear on the second line of the address, not on the first or last line.
- 5) Press enter three times after completion of an address to put two lines between each address.
- 6) The last line of each address must consist of the City, the standard 2-letter State abbreviation and ZIP code.
- 7) Use ZIP +4 format with a hyphen between the fifth and the sixth number. If there is no extension, enter 4 zeroes (0000).
- 8) **If Foreign Address:** On the last line, type the name of the **Country** only. Example:
Trewin Farm Equipment
Box 70
Blackstock Ontario LOB 1 BO
CANADA

Returning Disk: A used disk of comparable media will be traded for the submitted disk. If the filing takes place at intake, the disk will be substituted immediately. If the filing takes place through the mail, the disk will be returned along with any extra copies of documents, provided that a self-addressed, stamped envelope was supplied.

File Saving and Labeling Disk

1) After all the creditors are typed, the file should be saved to a diskette in text format, not the word processor's document format. The file name should be **creditor.txt**.

Example Instructions for Microsoft Word or WordPerfect for Windows:

After the matrix has been typed place a formatted diskette in the floppy drive and select the following items from the menu bar at the top of the window.

File

Save As...

Save File as Type: *(select one of the following type)*

MS-DOS Text or ASCII (DOS) Text

File Name: *(enter **Creditor** in the box below this item)*

Driues:

A: *(or whatever is appropriate for your PC)*

OK (left click the button one time with the mouse to complete saving the file).

Example Instructions for WordPerfect for DOS 5.1:

After the matrix has been typed into WordPerfect place a formatted diskette in the floppy drive and select the following keyboard commands:

<CTL> +f5 *(hold the 'CTRL' key down and press the "f5" key)* **next select**

1 Dos Text **next select**

1 Save

Document to be saved (DOS Text): *(enter the drive letter and file name:*

'A:CREDITOR.TXT')

Example Instructions for WordPerfect 3.5 for Macintosh:

After the creditor list has been typed into WordPerfect, put a DOS formatted diskette into the floppy drive and select the following items from the menu bars:

File

Save As (*This brings up the 'Save As' dialog box.*)

Select the floppy drive that contains the DOS formatted diskette from the list near the top of the 'Save As' dialog box.

In the 'Save Document As' field type the file name: 'creditor.txt'

From the 'Format' list select 'Text Export.'

Click the 'Save' button.

When the 'Text Type' window appears, select 'PC Text - Soft Return to Hard Return.'

2) Do not write on a disk label with ballpoint pen because the disk may be damaged. Use a felt-tip pen or write lightly in pencil. The following information should be include on each disk submitted:

- **name of submitting attorney or firm**
- **debtor's full name**
- **the number of creditors on the disk.**

3) It is advisable to save a backup copy of the creditor file, either on the hard drive of the computer or a second diskette, in case another copy of the file is needed later.

Certification Requirement

The diskette must be accompanied by a completed Cover Sheet substantially conforming to Exhibit 1, which is attached.

Computer Virus Protection

The court has computer software which scans diskettes for viruses in order to prevent possible damage to court records as well as affording protection to those who receive returned diskettes from the court. The court subscribes to a virus detection update service which allows us to detect the most recent computer viruses. All computer users are strongly urged to ensure that safeguards exist in their offices and virus detection software is regularly updated to detect and eradicate current and future computer viruses.

[discinstr ver. R-09/15/97]

EXHIBIT 6

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA**

_____ **Division**

In re

Case No.

Chapter

Debtor(s)

COVER SHEET FOR LIST OF CREDITORS

I hereby certify under penalty of perjury that the master mailing list of creditors submitted either on computer diskette or by a typed hard copy in scannable format is a true, correct, and complete listing to the best of my knowledge.

I further acknowledge that (1) the accuracy and completeness in preparing the creditor listing are the shared responsibility of the debtor and the debtor's attorney, (2) the court will rely on the creditor listing for all mailings, and (3) that the various schedules and statements required by the Bankruptcy Rules are not used for mailing purposes.

Master mailing list of creditors submitted via:

- (a) _____ computer diskette listing a total of _____ creditors; or
- (b) _____ scannable hard copy consisting of _____ number of pages listing a total of _____ creditors.

Debtor

Joint Debtor

Date: _____

[Check if applicable] _____ Creditor(s) with
foreign addresses included on disk/hard copy.

EXHIBIT 7

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA**

_____ **Division**

In re

Case No. _____

Debtor(s)

Chapter _____

REQUEST FOR WAIVER

The debtor(s) hereby request(s) that the court waive the requirement of the mailing matrix submission on a computer diskette as required by LBR 1007-1. Due to financial constraints and the inability to access the equipment necessary to comply with this requirement, the petitioner requests acceptance of the matrix submitted in the hard-copy scannable format.

The debtor understands that, should the court obtain information which indicates that the criteria set forth in this request does not exist, the mailing matrix shall be submitted to the court on computer diskette within forty-eight (48) hours of the filing of the petition.

Debtor

Joint Debtor

Date: _____

EXHIBIT 8

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
_____ Division**

In re

Case No. _____

*

Debtor(s)

Chapter _____

NOTICE OF RESCHEDULED MEETING OF CREDITORS

NOTICE IS HEREBY GIVEN that the meeting of creditors has been rescheduled to _____, and will be held at the Office of the United States Trustee at _____.

NOTICE IS FURTHER GIVEN that the deadline for filing a complaint objecting to the debtor's discharge under §727(a) and §523(c) of the Code is automatically extended to the date that is 60 days after the date of the rescheduled meeting.

[If appropriate] **NOTICE IS FURTHER GIVEN** that _____, of _____, has been appointed Substitute Interim Trustee of the estate of the above-named debtor(s) by the United States Trustee.

NOTICE GIVEN BY

Date: _____

Counsel for Debtor(s) *[or pro se Debtor(s)]*
Address:

State Bar Number:
Telephone Number:

PROOF OF SERVICE

I hereby certify that a copy of the foregoing notice was mailed to the debtor(s), Trustee, or *[if appropriate]* Substitute Interim Trustee, United States Trustee, and all creditors and parties in interest in the above case.

Counsel for Debtor(s) *[or pro se Debtor(s)]*

Date: _____

* Include Social Security No. or Tax Identification No.

EXHIBIT 9

MOTIONS DAY PROCEDURE FOR ALEXANDRIA DIVISION

Note: The following procedure is applicable only in the Alexandria Division of the United States Bankruptcy Court for the Eastern District of Virginia, and only with respect to motions, other than relief from stay motions, that can be heard in 30 minutes or less. In the Norfolk, Newport News, and Richmond Divisions, hearing dates for motions must in all instances be obtained from the Court in accordance with Local Bankruptcy Rule 9013-1(F).

MOTIONS DATES

- * Motions dates for each judge will be posted in the Clerk's office up to three (3) months in advance but should be verified by counsel or an unrepresented party prior to sending out notice in order to ensure that the date remains available. *A judge may require that specified types of matters be returnable to a specified time on a motions day, and counsel or parties setting matters for hearing are responsible for making the motion returnable to the correct time.* The motion must be set on the motions day for the judge assigned to the case and may not be set on the calendar of another judge except with the express authorization of the assigned judge. If for any reason a problem arises with a hearing date after the date has been posted, the Clerk will notify counsel with a new date, and the attorney or party filing the motion will be responsible for renoticing the matter.
- * Motions dates may be used for motions, objections, and applications that will take less than one-half hour to hear. There will be at least one (1) such day a month. The following matters may **not** be set on a motions day unless specifically authorized by the Court: matters that will take over one-half hour, motions for relief from the automatic stay, confirmation hearings, pretrial conferences, and expedited or emergency hearings.
- * *If a judge has a separate Chapter 13 docket, all motions, objections, and applications arising in a Chapter 13 case must be set on that docket and not on the general motions docket.* Objections to confirmation of the **original** plan filed in a Chapter 13 case **must** be noticed for the date and time of the confirmation hearing as set forth in the 341 notice or separate notice of confirmation hearing given by the Clerk. Objections to confirmation of a modified Chapter 13 plan may be set on any Chapter 13 motions day that provides proper notice.
- * The notice of hearing, motion, objection, or application must be filed with the Court, *in an original and one copy*, together with an orange motions day cover sheet no later than **15 days** prior to the hearing date. The notice of hearing and the motion, objection, or application must be served upon all parties entitled to notice in accordance with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules. If such rules do not specify a time period for service, then service must be made no later than 15 days prior to the hearing. There will

be **no** exceptions unless shorter notice has been specifically authorized by the judge to whom the matter is assigned. Any matter not timely noticed will **not** be set on the calendar but will be reassigned by the Clerk to the next available date that complies with the applicable notice requirement, and the counsel or party bringing the matter will be responsible for renoticing it.

- * Motions to be heard on a motions day must be filed, together with a notice of hearing, in an original and one copy. The copy must be attached to an orange notice of hearing cover sheet (available from the Clerk's office). The copy attached to the orange cover sheet need not contain supporting memoranda or exhibits. ***The orange cover sheet is not a substitute for any required notice of hearing.*** The orange cover sheet will alert the intake deputy to deliver the motion and notice of hearing to the courtroom deputy. ***If a copy of the motion and notice is not filed with an orange cover sheet, the matter will not be placed on the motions docket and will have to be reset.***

MOTIONS REQUIRING MORE THAN ONE-HALF HOUR

- * For those matters that will take over one-half hour, the counsel or party bringing the motion, objection, or application must request a hearing date from the Clerk and must certify to the Court the moving party's estimate of the time required to hear the matter. A certification of time estimate cover sheet is obtainable from the Clerk's office and is the preferred form for requesting a hearing date.
- * If a matter is set for a motions day on the good faith belief that it will take less than one-half hour, but it subsequently becomes apparent that the matter will take more than one-half hour, counsel may request a date and time from the Clerk for hearing the matter, provided notice of the rescheduled hearing can be and is given to all affected parties at least **ten days** prior to the scheduled hearing. Otherwise, the moving party or counsel will be required to appear in Court to schedule the matter for final hearing.

CONSENT ORDERS

- * A courtroom deputy will be available to take all **fully-endorsed** consent orders and stipulations, including consent orders for a continuance to another scheduled motions day, between 8:45 and 9:15 a.m. on the day that the hearing is scheduled. An order will **not** be treated as a "consent" order merely because no opposition has been filed to the motion, objection, or application.
- * **If counsel or an unrepresented party, in lieu of personally presenting a consent order to the courtroom deputy, transmits the order by messenger or mail, or presents it at the intake counter, the counsel or party tendering the order is responsible for verifying with the courtroom deputy that she or he has received it.** Any consent order submitted within two business days of a hearing **must** be accompanied by a yellow expedited handling cover sheet. Failure to comply with these requirements with respect to an order not personally

presented to the courtroom deputy on the morning of the hearing may, in the Court's discretion, result in the motion, objection, or application being dismissed for failure to prosecute.

- * Any consent order continuing a relief from stay hearing must contain language continuing the automatic stay in full force and effect pending a ruling by the Court at such continued hearing. Additionally, if a consent order in a relief from stay motion grants relief from the stay, and such order has not been noticed under Bankruptcy Rule 4001(d), a certification must be attached stating either that the order provides no greater or different relief than requested in the motion or that Bankruptcy Rule 4001(d) does not require notice.

COUNSEL HAVING MATTERS BEFORE MORE THAN ONE JUDGE

- * Counsel or an unrepresented party having matters before more than one judge on a motions day **must advise the courtroom deputy that the counsel or party is in another courtroom and must provide an estimated time when such counsel or party will be available.** If counsel or a party is in another courtroom when a particular matter is called, and has **not** checked in, the Court may summarily dismiss or dispose of the matter or may hold the offending counsel or party in contempt.

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